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CUMULATIVE POCKET SUPPLEMENT

IDAHO CODE

Compiled Under the Supervision of the
Idaho Code Commission

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COMMISSIONERS

TITLES 38, 39(1-44)

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PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2014 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter, 3rd Series
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Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

Idaho R. Civ. P.	Idaho Rules of Civil Procedure
Idaho Evidence Rule	Idaho Rules of Evidence
Idaho R. Crim. P.	Idaho Criminal Rules
Idaho Misdemeanor Crim. Rule	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
Idaho App. R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2012	March 29, 2012
2013	April 4, 2013
2014	March 20, 2014

TITLE 38

FORESTRY, FOREST PRODUCTS AND STUMPAGE DISTRICTS

CHAPTER 1

IDAHO FORESTRY ACT

38-104B. Nonprofit rangeland fire protection associations. — (1) "Nonprofit rangeland fire protection association" means a nonprofit corporation or nonprofit unincorporated association, that has entered into an agreement for the detection, prevention or suppression of forest and range fires with the state of Idaho or any agency of the state of Idaho pursuant to title 38, Idaho Code.

(2) A group of rangeland owners wishing to establish a rangeland fire protection association shall petition the director of the department of lands. The director may accept petitions where:

(a) Petitioners meet the requirements established by the director concerning the legal status of the association, liability insurance and governing and managing structure; and

(b) Petitioners demonstrate financial ability to form a rangeland fire protection association; or

(c) Adequate state funding exists, as determined by the director, to assist in the initial establishment of the association.

(3) Prior to entering into an agreement, and annually thereafter, the director shall review and inspect the association for the following:

(a) The governing and managing structure of the association;

(b) The adequacy of liability insurance; and

(c) The training of all association personnel.

History.
I.C., § 38-104B, as added by 2013, ch. 59, § 1, p. 135.

STATUTORY NOTES

Cross References.
Director of department of lands, § 58-105.

38-107. Uncontrolled fires a nuisance — Abatement — Civil liability. — (1) Any forest or range fire burning out of control or without adequate and proper precautions having been taken to prevent its spread, is hereby declared a public nuisance, by reason of its menace to life and/or property. Any person responsible through his conduct, acts and/or control of property or operations for either the starting or the existence of such fire is hereby required to make a reasonable effort to control or extinguish it immediately, without awaiting instructions from the director of the department of lands or a fire warden. The director of the department of lands or any fire warden may summarily abate the nuisance thus constituted by controlling or extinguishing such fire and the person willfully or negligently responsible for the starting or existence of such fire shall be liable for the costs incurred by the state or its authorized agencies in controlling or extinguishing the same. The amount of such costs shall be recovered by a civil action prosecuted in the name of the state of Idaho and any amounts recovered shall be paid to the state treasurer for deposit to the forest protection fund. Civil liability provided for herein shall be exclusive of and in addition to any criminal penalties otherwise provided.

(2) Notwithstanding any other provision of law, in a civil action against any person, legal entity, state or political subdivision for forest or range fire caused by a negligent or unintentional act, which act was not willful or intentional under section 6-202, Idaho Code, the real and personal property damage is limited to:

(a) The reasonable costs for controlling or extinguishing the forest or range fire;

(b) Economic damages; and

(c) Either (i) the diminution of fair market value of the real and personal property resulting from the fire, or (ii) the actual and tangible restoration costs associated with bringing the damaged real and personal property back to its pre-injured state to the extent that such actual and tangible restoration costs are reasonable and practical.

As used in this subsection, "economic damages" means objectively verifiable monetary loss including, but not limited to, out-of-pocket expenses, loss of earnings, loss of use of property or loss of business or employment opportunities. As further used in this subsection, "fair market value" means the amount a willing buyer would pay a willing seller in an arms-length transaction when both parties are fully informed about all of the advantages and disadvantages of the property and neither is acting under any compulsion to buy or sell, as determined by a state certified appraiser, who is qualified to appraise the property. Claims against the state or a political subdivision shall remain subject to the requirements of chapter 9, title 6, Idaho Code, and damages against the state or a political subdivision shall be the amount set forth in chapter 9, title 6, Idaho Code, as limited in this subsection.

History.
1972, ch. 401, § 2, p. 1164; am. 2013, ch. 62, § 3, p. 138.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 62, designated the extant provisions of the section as subsection (1) and added subsection (2).

Legislative Intent.

Section 1 of S.L. 2013, ch. 62 provided: "Legislative Intent. The Legislature finds that generally, real and personal property damage caused by forest and range fire is measured by the diminution of fair market value of the real and personal property. In Idaho, restoration damages may be awarded if there is a reason personal to the owner for restoring the forest or range land to its original condition.

"The Legislature further finds that in other jurisdictions, large forest or range land owners have sought and have been awarded double recovery, the diminution of fair market value and restoration costs, for the damage to forest or range land caused by forest or range fires. The awards include intangible environmental damages that are clearly speculative in their nature, and should not be recoverable. This legislation clarifies that for real and personal property damage caused by forest or range fire, recovery is limited to reasonable suppression costs, economic damages and either the diminution of fair market value of the real and personal property, or the actual and tangible costs for restoration, not intangible environmental damages, as a result of the forest or range fire."

Compiler's Notes.

Section 4 of S.L. 2013, ch. 62 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 5 of S.L. 2013 declared an emergency. Approved March 12, 2013.

CHAPTER 7

FOREST, WILDLIFE AND RANGE EXPERIMENT STATION

38-715. Rangeland center created — Director — Duties — Control by state board of regents — Powers and duties of rangeland center — Partner advisory council. — (1) There is hereby created and established in the university of Idaho, a rangeland center, for the purpose of creating a new model for interdisciplinary research, education and outreach to fulfill the university's land grant mission. The center shall be comprised of researchers and educators from the college of natural resources, the college of agricultural and life sciences, the university of Idaho cooperative extension and other colleges or units in the university of Idaho, and other research agencies, colleges and universities with expertise in, but not limited to, grazing, rangeland ecology, entomology, soil science, economics, rural sociology, fish and wildlife management, invasive plant management, forage production, animal science, restoration and the use of spatial technologies to understand rangelands.

(2) The fiscal and human resources of the rangeland center shall be under the management of a director who shall hold an academic appointment in a department within the university of Idaho, or joint appointment in departments.

(a) The director shall have the following duties:

(i) To report to the deans of the college of natural resources and the college of agricultural and life sciences and the director of the university of Idaho cooperative extension on rangeland center activities and accomplishments annually and when otherwise requested;

(ii) To work closely with the partner advisory council to identify and set priorities for the rangeland center;

(iii) To seek opportunities, secure resources and promote the work of the rangeland center faculty and staff;

(iv) To provide input for annual evaluation of faculty members who have a portion of their position description dedicated to the rangeland center;

(v) To supervise staff assigned to the rangeland center; and

(vi) To oversee budgets secured by and assigned to the rangeland center.

(b) The rangeland center shall be under the control of the state board of regents of the university of Idaho through the deans of the colleges of natural resources and agricultural and life sciences who shall have the power and whose duty it shall be to appoint or designate the director and such faculty and staff as may be necessary, and to fix their compensation.

(3) The rangeland center shall:

(a) Empower researchers and educators at the university of Idaho who strive to create insight and foster understanding for the stewardship and management of rangelands;

(b) Work in union with external partners to focus research, education and outreach to produce solutions that are responsive and relevant to contemporary rangeland issues;

(c) Engage partners and stakeholders to jointly provide leadership for discovery of new knowledge and create science-based solutions for rangeland management;

(d) Provide objective and relevant rangeland information for individuals, organizations and communities;

(e) Offer learning opportunities for land stewardship;

(f) Establish a partner advisory council for the purpose of setting strategic goals for the rangeland center, assessing accomplishments relative to the strategic goals, conveying resources and opportunities to accomplish the work of the center and any further purposes as determined; and

(g) Encourage and facilitate applied research to address specific issues and management challenges that arise on Idaho's diverse rangelands.

(4) The partner advisory council shall consist of ten (10) to fifteen (15) members, with a variety of backgrounds, interests and expertise related to rangelands. The initial council shall be appointed by the director of the rangeland center. The council shall establish guidelines for decision making and shall appoint one (1) of its members as chairman who shall thereafter appoint additional members in consultation with the director, not to exceed fifteen (15) members. The council shall meet at a minimum annually and shall conduct annual and five (5) year reviews of the rangeland center and its performance based on strategic goals as established by the council. Such reviews shall be made available to the deans of the college of natural

resources and the college of agricultural and life sciences, the director of the university of Idaho cooperative extension, rangeland center faculty members, advisory council members, and their respective stakeholders and constituents.

History.
I.C., § 38-715, as added by 2012, ch. 144, § 1, p. 379.

STATUTORY NOTES

Cross References.
Board of regents, § 33-2802.

Compiler's Notes.
Section 3 of S.L. 2012, ch. 144 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

38-716. Rangeland center act. — This act shall be known and may be cited as the "Rangeland Center Act."

History.
I.C., § 38-716, as added by 2012, ch. 144, § 2, p. 379.

STATUTORY NOTES

Compiler's Notes.
The term "this act" refers to S.L. 2012, ch. 144, which is compiled as §§ 38-715 and this section.

Section 3 of S.L. 2012, ch. 144 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

CHAPTER 8

FLOATING TIMBER

SECTION.

38-804. Application of proceeds. — When sold, the proceeds of the timber must be applied, first, to the payment of the charges of the sale, and in liquidation of the expenses and damages awarded to the person entitled thereto; and the residue must be paid to the county treasurer, to be by him paid over to the owner, or his representative or assigns, on the production of satisfactory proof of ownership to the magistrate judge, and on his order therefor made within one (1) year after its receipt.

History.
R.S., § 833; reen. R.C. & C.L., § 870; C.S., § 1298; I.C.A., § 37-304; am. 2012, ch. 20, § 19, p. 66.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 20, substituted "magistrate judge" for "probate judge" near the end of the section.

38-805. Rejection of claimant's right — Disposition of proceeds. — The rejection by the magistrate judge of any claimant's right to such proceeds is conclusive, unless, within six (6) months thereafter, he commences action therefor. In case no claim is made or sustained to such proceeds, the same must, by the county treasurer, be placed in the common school fund of the county.

History.
R.S., § 834; reen. R.C. & C.L., § 871; C.S., § 1299; I.C.A., § 37-305; am. 2012, ch. 20, § 20, p. 66.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 20, substituted "magistrate judge" for "probate judge" near the beginning of the section.

CHAPTER 10
STUMPAGE DISTRICTS

SECTION.
38-1001 — 38-1027. [Repealed.]

38-1001. Corporate powers of stumpage districts. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, § 1, p. 33; compiled and reen. C.L. 169:1; C.S., § 4556; I.C.A., § 37-501.

STATUTORY NOTES

Prior Laws.
Former chapter 10 of Title 38, which comprised the following sections, was repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

38-1001. Corporate powers of stumpage districts. [1917, ch. 15, § 1, p. 33; compiled and reen. C.L. 169:1; C.S., § 4556; I.C.A., § 37-501.

38-1002. Petition for organization. [1917, ch. 15, part of § 2, p. 34; reen. C.L. 169:2; C.S., § 4557; I.C.A., § 37-502.]

38-1003. Bond for costs if district not established. [1917, ch. 15, parts of §§ 2, 4, pp. 35, 36; reen. C.L. 169:3; C.S., § 4558; I.C.A., § 37-503.]

38-1004. Notice of hearing. [1917, ch. 15, § 3, p. 35; reen. C.L. 169:4; C.S., § 4559; I.C.A., § 37-504.]

38-1005. Hearing and order. [1917, ch. 15, parts of §§ 4, 13, pp. 35, 39; compiled and reen. C.L. 169:5; C.S., § 4560; I.C.A., § 37-505.]

38-1006. Appointment of stumpage commissioners — Organization of board. [1917, ch. 15, parts of §§ 4 and 5, p. 35; reen. C.L. 169:6; C.S., § 4561; I.C.A., § 37-506.]

38-1007. Officers — Meetings. [1917, ch. 15, parts of §§ 6, 7, p. 36; compiled and reen. C.L. 169:7; C.S., § 4562; I.C.A., § 37-507.]

38-1008. Vacancies. [1917, ch. 15, part of § 8, p. 37; reen. C.L. 169:8; C.S., § 4563; I.C.A., § 37-508.]

38-1009. Compensation of commissioners. [1917, ch. 15, part of § 7, p. 36; reen. C.L. 169:9; C.S., § 4564; I.C.A., § 38-509.]

38-1010. Preliminary survey. [1917, ch. 15, § 9, p. 37; compiled and reen. C.L. 169:10; C.S., § 4565; I.C.A., § 37-510; am. 1963, ch. 68, § 1, p. 260.]

38-1011. Duties of prosecuting attorney.

[1917, ch. 15, § 10, p. 37; compiled and reen. C.L. 169:11; C.S., § 4566; I.C.A., § 37-511.]

38-1012. Report of intention to do work — Notice of hearing. [1917, ch. 15, § 11, p. 37; compiled and reen. C.L. 169:12; C.S., § 4567; I.C.A., § 37-512.]

38-1013. Order of confirmation — Assessment of benefits. [1917, ch. 15, part of § 12, p. 38; reen. C.L. 169:13; C.S., § 4568; I.C.A., § 37-513.]

38-1014. Assessments entered as tax liens — Installments. [1917, ch. 15, part of § 12, p. 38; reen. C.L. 169:14; C.S., § 4569; I.C.A., § 37-514.]

38-1015. Appeals from assessments. [1917, ch. 15, § 23, p. 42; reen. C.L. 169:15; C.S., § 4570; I.C.A., § 37-515.]

38-1016. Clearing of lands — Executive powers of board. [1917, ch. 15, part of § 8, p. 37; reen. C.L. 169:16; C.S., § 4571; I.C.A., § 37-516.]

38-1017. Contract for clearing — Contractor's bonds. [1917, ch. 15, § 14, p. 39; compiled and reen. C.L. 169:17; C.S., § 4572; I.C.A., § 37-517.]

38-1018. Payment to contractors. [1917, ch. 15, § 15, p. 40; reen. C.L. 169:18; C.S., § 4573; I.C.A., § 37-518.]

38-1019. Warrants. [1917, ch. 15, part of § 6, p. 36; reen. C.L. 169: 19; C.S., § 4574; I.C.A., § 37-519; am. 1980, ch. 61, § 5, p. 118.]

38-1020. Payment of warrants — Interest. [1917, ch. 15, § 22, p. 42; reen. C.L. 169:20; C.S., § 4575; I.C.A., § 37-520.]

38-1021. Bonds authorized. [1917, ch. 15, parts of § 16, pp. 40, 41; reen. C.L. 169:21; C.S., § 4576; I.C.A., § 37-521.]

38-1022. Refunding bonds. [1917, ch. 15, part of § 16, p. 40; reen. C.L. 169:22; C.S., § 4577; I.C.A., § 37-522.]

38-1023. Form of bonds — Interest. [1917, ch. 15, § 17, p. 41; reen. C.L., 169:23; C.S., § 4578; I.C.A., § 37-523; am. 1970, ch. 133, § 1, p. 309.]

38-1024. Levy for sinking fund. [1917, ch. 15, § 18, p. 41; reen. C.L. 169:24; C.S., § 4579; I.C.A., § 37-524.]

38-1025. Payment of bonds. [1917, ch. 15, § 19, p. 41; reen. C.L. 169:25; C.S., § 4580; I.C.A., § 37-525.]

38-1026. Levy for interest. [1917, ch. 15, § 20, p. 41; reen. C.L. 169:26; C.S., § 4581; I.C.A., § 37-526.]

38-1027. Registration of bonds. [1917, ch. 15, § 21, p. 42; reen. C.L. 169:27; C.S., § 4582; I.C.A., § 37-527.]

38-1002. Petition for organization. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.

1917, ch. 15, part of § 2, p. 34; reen. C.L. 169:2; C.S., § 4557; I.C.A., § 37-502.

38-1003. Bond for costs if district not established. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.

1917, ch. 15, parts of §§ 2, 4, pp. 35, 36; reen. C.L. 169:3; C.S., § 4558; I.C.A., § 37-503.

38-1004. Notice of hearing. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.

1917, ch. 15, § 3, p. 35; reen. C.L. 169:4; C.S., § 4559; I.C.A., § 37-504.

38-1005. Hearing and order. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.

1917, ch. 15, parts of §§ 4, 13, pp. 35, 39; compiled and reen. C.L. 169:5; C.S., § 4560; I.C.A., § 37-505.

38-1006. Appointment of stumpage commissioners — Organization of board. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, parts of §§ 4 and 5, p. 35; reen. C.L. 169:6; C.S., § 4561; I.C.A., § 37-506.

38-1007. Officers — Meetings. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, parts of §§ 6, 7, p. 36; compiled and reen. C.L. 169:7; C.S., § 4562; I.C.A., § 37-507.

38-1008. Vacancies. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, part of § 8, p. 37; reen. C.L. 169:8; C.S., § 4563; I.C.A., § 37-508.

38-1009. Compensation of commissioners. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, part of § 7, p. 36; reen. C.L. 169:9; C.S., § 4564; I.C.A., § 38-509.

38-1010. Preliminary survey. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, § 9, p. 37; compiled and reen. C.L. 169:10; C.S., § 4565; I.C.A., § 37-510; am. 1963, ch. 68, § 1, p. 260.

38-1011. Duties of prosecuting attorney. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, § 10, p. 37; compiled and reen. C.L. 169:11; C.S., § 4566; I.C.A., § 37-511.

38-1012. Report of intention to do work — Notice of hearing. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, § 11, p. 37; compiled and reen. C.L. 169:12; C.S., § 4567; I.C.A., § 37-512.

38-1013. Order of confirmation — Assessment of benefits. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, part of § 12, p. 38; reen. C.L. 169:13; C.S., § 4568; I.C.A., § 37-513.

38-1014. Assessments entered as tax liens — Installments. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, part of § 12, p. 38; reen. C.L. 169:14; C.S., § 4569; I.C.A., § 37-514.

38-1015. Appeals from assessments. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, § 23, p. 42; reen. C.L. 169:15; C.S., § 4570; I.C.A., § 37-515.

38-1016. Clearing of lands — Executive powers of board. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, part of § 8, p. 37; reen. C.L. 169:16; C.S., § 4571; I.C.A., § 37-516.

38-1017. Contract for clearing — Contractor's bonds. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, § 14, p. 39; compiled and reen. C.L. 169:17; C.S., § 4572; I.C.A., § 37-517.

38-1018. Payment to contractors. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, § 15, p. 40; reen. C.L. 169:18; C.S., § 4573; I.C.A., § 37-518.

38-1019. Warrants. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, part of § 6, p. 36; reen. C.L. 169: 19; C.S., § 4574; I.C.A., § 37-519; am. 1980, ch. 61, § 5, p. 118; am. 2014, ch. 97, § 23, p. 265.

STATUTORY NOTES

Compiler's Notes.
S.L. 2014, ch. 97, § 23 purported to amend this section; however, § 1 of S.L. 2014, ch. 234 repealed this section, effective July 1, 2014.

38-1020. Payment of warrants — Interest. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, § 22, p. 42; reen. C.L. 169:20; C.S., § 4575; I.C.A., § 37-520.

38-1021. Bonds authorized. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, parts of § 16, pp. 40, 41; reen. C.L. 169:21; C.S., § 4576; I.C.A., § 37-521.

38-1022. Refunding bonds. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, part of § 16, p. 40; reen. C.L. 169:22; C.S., § 4577; I.C.A., § 37-522.

38-1023. Form of bonds — Interest. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, § 17, p. 41; reen. C.L., 169:23; C.S., § 4578; I.C.A., § 37-523; am. 1970, ch. 133, § 1, p. 309.

38-1024. Levy for sinking fund. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, § 18, p. 41; reen. C.L. 169:24; C.S., § 4579; I.C.A., § 37-524.

38-1025. Payment of bonds. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, § 19, p. 41; reen. C.L. 169:25; C.S., § 4580; I.C.A., § 37-525.

38-1026. Levy for interest. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, § 20, p. 41; reen. C.L. 169:26;
C.S., § 4581; I.C.A., § 37-526.

38-1027. Registration of bonds. [Repealed.]

Repealed by S.L. 2014, ch. 234, § 1, effective July 1, 2014.

History.
1917, ch. 15, § 21, p. 42; reen. C.L. 169:27;
C.S., § 4582; I.C.A., § 37-527.

CHAPTER 12
LOG SCALING

SECTION.

38-1203. Idaho board of scaling practices — Members — Terms. — (1) A board to be known as the "Idaho board of scaling practices" is hereby created in the department of lands. It shall consist of the director of the department of lands and six (6) members appointed by the governor from among nominees representing the following segments of the timber industry of Idaho: manufacturing, logging and transportation, nonindustrial private forest landowners and industrial forest landowners. Provided that:

(a) Two (2) board members shall be appointed from nominees provided to the governor by companies processing scaled logs within the state of Idaho to represent the interests of the manufacturing segment of the timber industry, one (1) member from companies consuming less than one hundred million (100,000,000) board feet of logs annually and one (1) member from companies consuming more than one hundred million (100,000,000) board feet of logs annually.

(b) Two (2) board members shall be appointed from nominees provided to the governor by the associated logging contractors of Idaho, inc., to represent the interests of the logging and transportation segment of the timber industry, one (1) member from north of the Salmon river and one (1) member from south of the Salmon river.

(c) One (1) board member shall be appointed from nominees provided to the governor by the Idaho forest owners association to represent the interests of nonindustrial private forest landowners throughout the state. The person representing nonindustrial private forest landowners shall own not more than fifty thousand (50,000) acres of private forest land and shall not own or control a forest products manufacturing facility within the state. In choosing this person, the governor shall give preference to persons with a demonstrated history of selling timber or logs to a variety of purchasers and who have scaling or forest management experience.

(d) One (1) board member shall be appointed from nominees provided to the governor by timber growing landowners holding more than fifty thousand (50,000) acres of forest land within the state of Idaho, to represent the interests of industrial forest landowners.

(e) No person or legal entity representing the interests of manufacturing or industrial forest landowners shall have more than one (1) board seat at the same time.

(2) The members of the board shall have the qualifications required by section 38-1204, Idaho Code. The members of the board shall be appointed for a three (3) year term. Each member of the board shall take, subscribe and file the oath required by sections 59-401 through 59-408, Idaho Code, before entering upon the duties of his office. On the expiration of the term of any member, his successor shall be appointed in like manner by the governor for a term of three (3) years and unexpired terms shall be filled for the unexpired balance of the term. Upon expiration of the term of office, a member shall continue to serve until a successor shall have been appointed.

History.

1969, ch. 91, § 3, p. 305; am. 1972, ch. 114, § 1, p. 229; am. 1974, ch. 17, § 20, p. 308; am. 1986, ch. 330, § 1, p. 812; am. 1999, ch. 120, § 1, p. 357; am. 2008, ch. 200, § 1, p. 645; am. 2012, ch. 204, § 1, p. 544.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 204, divided the existing provisions into subsections (1) and (2); rewrote subsection (1), increasing the board size from 5 to 6 members; and added the last sentence in subsection (2).

Effective Dates.

Section 2 of S.L. 2012, ch. 204, declared an emergency. Approved April 3, 2012.

CHAPTER 13

FOREST PRACTICES ACT

38-1302. Policy of the state — Purpose of act.

RESEARCH REFERENCES

Idaho Law Review. — "Tough Law" Getting Tougher: A Proposal for Permitting Idaho's Logging Road Stormwater Point Sources After *Northwest Environmental Defense Center v. Brown*, Case Note. 48 Idaho L. Rev. 467 (2012).

38-1306. Notification of forest practice.

RESEARCH REFERENCES

Idaho Law Review. — "Tough Law" Getting Tougher: A Proposal for Permitting Idaho's Logging Road Stormwater Point Sources After *Northwest Environmental Defense Center v. Brown*, Case Note. 48 Idaho L. Rev. 467 (2012).

38-1307. Notice of violation — Cease and repair order — Stop work order — Enforcement procedures — Remedies of the operator.

RESEARCH REFERENCES

Idaho Law Review. — "Tough Law" Getting Tougher: A Proposal for Permitting Idaho's Logging Road Stormwater Point Sources After *Northwest Environmental Defense Center v. Brown*, Case Note. 48 Idaho L. Rev. 467 (2012).

38-1309. Duty of purchaser.

RESEARCH REFERENCES

Idaho Law Review. — "Tough Law" Getting Tougher: A Proposal for Permitting Idaho's Logging Road Stormwater Point Sources After *Northwest Environmental Defense Center v. Brown*, Case Note. 48 Idaho L. Rev. 467 (2012).

38-1311. Enforcement of act.

RESEARCH REFERENCES

Idaho Law Review. — "Tough Law" Getting Tougher: A Proposal for Permitting Idaho's Logging Road Stormwater Point Sources After *Northwest Environmental Defense Center v. Brown*, Case Note. 48 Idaho L. Rev. 467 (2012).

CHAPTER 15

IDAHO FOREST PRODUCTS COMMISSION

SECTION.
38-1503. Forest products commission created — Members.
38-1504. Qualifications of the member and composition of the commission.
38-1515. Imposition of assessments and provision for late fees.

38-1503. Forest products commission created — Members. — (1) There is hereby created and established in the department of self-governing agencies the Idaho forest products commission, to be composed of five (5) voting members appointed by the governor from a list of names with at least two (2) names for each appointive office for each district submitted to the governor by the financial supporters of the commission in each district. Initial members of the commission shall serve either a three (3) or five (5) year term, with two (2) members of the commission serving three (3) year terms, and three (3) members of the commission serving five (5) year terms. For the initial commission members, the duration of each member's term shall be determined by lot. Thereafter, all commission members shall serve terms of three (3) years, and may be reappointed. The commission shall adopt rules to define the process for filling vacancies to the commission and to provide for determining the terms of office for all members of the commission after the expiration of the terms of the original members.

(2) The governor shall also name as permanent advisory members to the

commission, the director of the department of lands, a representative of the United States forest service, the dean of the University of Idaho college of natural resources or the dean's designee, a representative of the Idaho department of commerce and the Idaho department of agriculture with expertise in marketing and promotion and the executive director of the associated logging contractors. No advisory member of the commission shall have a vote on the commission.

History.
I.C., § 38-1503, as added by 1992, ch. 163, § 1, p. 518; am. 1995, ch. 255, § 1, p. 835; am. 2014, ch. 102, § 1, p. 301.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 102, in subsection (2), substituted "college natural resources" for "college forestry, wildlife and range sciences" and "a representative of the Idaho department of commerce and the Idaho department of agriculture with expertise in marketing and promotion and the executive director of" for "and the executive directors of the intermountain forest industry association and".

Effective Dates.
Section 4 of S.L. 2014, ch. 102 declared an emergency. Approved March 17, 2014.

38-1504. Qualifications of the member and composition of the commission. — (1) Each member of the commission shall be nominated and appointed because of their knowledge of forest management, the forest products industry, or because they possess communications skills which would enhance the ability of the commission to carry out its duties. Members of the commission shall be residents of the state who derive a substantial part of their income from association with the forest products industry within the state of Idaho. Beginning on July 1, 2014, there shall be a total of five (5) members, including four (4) district members and one (1) at-large member. There shall be one (1) district member from each of the four (4) districts as follows:

District 1. The counties of Boundary, Bonner and Kootenai.

District 2. The counties of Shoshone, Benewah, Latah and Clearwater.

District 3. Idaho county and all counties north of the Salmon river not heretofore named.

District 4. Adams, Valley, Payette, Washington, Ada, Boise, Gem, and all other counties south of the Salmon river not heretofore named.

At-large. There shall be one (1) at-large member from any of the four (4) districts identified herein.

(2) The governor shall assure through his appointments to the commission that the commission membership reflects equitable representation from the timber growing, logging and transportation, and forest products manufacturing segments of the industry.

History.
I.C., § 38-1504, as added by 1992, ch. 163, § 1, p. 518; am. 2014, ch. 102, § 2, p. 301.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 102, in subsection (1), rewrote the last sentence in the introductory language, which formerly read: "There shall be a total of five (5) members from the four (4) districts as follows", deleted the former last sentence in the "District 4" paragraph which read: "From this district, the governor shall appoint two (2) members to the commission", and added the last paragraph; and deleted the former last sentence in subsection (2), which read: "The commission shall also include no less than one (1) member with demonstrated experience in communications or natural resource education".

Effective Dates.

Section 4 of S.L. 2014, ch. 102 declared an emergency. Approved March 17, 2014.

38-1515. Imposition of assessments and provision for late fees. — (1) From and after the first day of July, 1995, the commission is hereby authorized to levy the following assessments:

(a) For all forest products manufacturers, an amount no greater than fifty cents (50¢) per thousand board feet or the equivalent thereof for all logs either harvested in Idaho or measured or processed by a manufacturing entity located in the state of Idaho, regardless of the state in which the logs might have been cut. For purposes of this chapter, "forest products manufacturers" shall include those business entities which buy timber in Idaho and then sell it to other persons outside the state for manufacture into finished products. Such business entities shall be liable for the assessments described in this paragraph for all timber cut within Idaho and then distributed to other persons outside the state.

(b) For all business entities engaged in the harvest or transport of timber, logs, unfinished lumber, chips, sawdust, shavings or hog fuel in Idaho, a sum no greater than twenty-five dollars ($25.00) per employee, including single, self-employers and the individuals involved in partnerships, as measured by the records of the department of labor during the month of July of the preceding year, or as provided in subsection (2) of this section, provided, however, those business entities engaged solely in the harvest or transport of those exclusions to forest products manufacturers as set forth in subsection (7)(a), (b), (c) and (d) of section 38-1502, Idaho Code, shall owe no duty or assessment under this chapter, nor shall any assessment be levied upon forest products transported by railroad.

(c) For business entities or persons owning more than ten thousand (10,000) acres of private forest land within the state of Idaho, a sum no greater than ten cents (10¢) per each acre of forest land.

(d) No firm or business entity shall be liable for assessments under this chapter in more than one (1) of the categories described in this section. In the event that a person, firm or business entity qualifies to pay more than one (1) assessment as described herein, then the greater of the assessments shall be assessed, due and payable.

(2) In collecting assessments due the commission, the commission is authorized to cooperate with and coordinate its actions to collect assessments with the various efforts of the Idaho board of scaling practices, the state tax commission, the department of labor, the transportation department and the department of lands to either collect assessments or taxes due

under the provisions of this chapter or to identify those who may owe assessments under the provisions of this chapter.

(3) Any person or firm who makes payment to the commission at a date later than that prescribed in rules set forth by the commission under this section may be subject to a late payment penalty as set forth by the commission by rule. Such penalty shall not exceed fifteen percent (15%) per annum on the amount due. In addition to the above penalty, the commission shall be entitled to recover all costs, fees, and reasonable attorney's fees incurred in the collection of the tax and penalty provided for in this section.

(4) An assessment levied under this chapter shall be based upon data compiled from the base year. Assessments shall be paid to the commission according to such rules as may be adopted by the commission.

History.

I.C., § 38-1515, as added by 1992, ch. 163, § 1, p. 518; am. 1995, ch. 255, § 3, p. 835; am. 1997, ch. 260, § 2, p. 742; am. 2003, ch. 101, § 2, p. 319; am. 2014, ch. 102, § 3, p. 301.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 102, substituted "department of labor" for "department of employment" in paragraph (1)(b) and subsection (2); rewrote paragraph (1)(c), which formerly read: "For business entities or persons owning more than fifty thousand (50,000) acres of private forest land within the state of Idaho but with no facilities for manufacturing forest products within the state, a sum no greater than sixteen and sixty-six one hundredths cents (16.66¢) per each acre of forest land, provided, however, that this assessment shall be reduced by an amount equal to the assessment described in paragraph (a) of this subsection for all logs harvested from that land in the preceding calendar year and assessed in this section. Persons owning less than a total of fifty thousand (50,000) acres of forest land in the state shall bear no assessment or fee pursuant to the provisions of this subsection"; and inserted "state" preceding "tax commission" in subsection (2).

Effective Dates.

Section 4 of S.L. 2014, ch. 102 declared an emergency. Approved March 17, 2014.

TITLE 39

HEALTH AND SAFETY

CHAPTER 1

ENVIRONMENTAL QUALITY — HEALTH

39-102. State policy on environmental protection.

RESEARCH REFERENCES

Idaho Law Review. — A Primer on Groundwater Law, Joseph W. Dellapenna. 49 Idaho L. Rev. 265 (2013).

39-108. Investigation — Inspection — Right of entry — Violation — Enforcement — Penalty — Injunctions. — (1) The director shall cause investigations to be made upon receipt of information concerning an alleged violation of this act or of any rule, permit or order promulgated thereunder, and may cause to be made such other investigations as the director shall deem advisable.

(2) For the purpose of enforcing any provision of this chapter or any rule authorized in this chapter, the director or the director's designee shall have the authority to:

(a) Conduct a program of continuing surveillance and of regular or periodic inspection of actual or potential environmental hazards, air contamination sources, water pollution sources and of solid waste disposal sites;

(b) Enter at all reasonable times upon any private or public property,

upon presentation of appropriate credentials, for the purpose of inspecting or investigating to ascertain possible violations of this act or of rules, permits or orders adopted and promulgated by the director or the board;

(c) All inspections and investigations conducted under the authority of this chapter shall be performed in conformity with the prohibitions against unreasonable searches and seizures contained in the fourth amendment to the constitution of the United States and section 17, article I, of the constitution of the state of Idaho. The state shall not, under the authority granted by this chapter, conduct warrantless searches of private property in the absence of either consent from the property owner or occupier or exigent circumstances such as a public health or environmental emergency;

(d) Any district court in and for the county in which the subject property is located is authorized to issue a search warrant to the director upon a showing of (i) probable cause to suspect a violation, or (ii) the existence of a reasonable program of inspection. Any search warrant issued under the authority of this chapter shall be limited in scope to the specific purposes for which it is issued and shall state with specificity the manner and the scope of the search authorized.

(3) Whenever the director determines that any person is in violation of any provision of this act or any rule, permit or order issued or promulgated pursuant to this act, the director may commence either of the following:

(a) Administrative enforcement action.

(i) Notice. The director may commence an administrative enforcement action by issuing a written notice of violation. The notice of violation shall identify the alleged violation with specificity, shall specify each provision of the act, rule, regulation, permit or order which has been violated and shall state the amount of civil penalty claimed for each violation. The notice of violation shall inform the person to whom it is directed of an opportunity to confer with the director or the director's designee in a compliance conference concerning the alleged violation. A written response may be required within fifteen (15) days of receipt of the notice of violation by the person to whom it is directed.

(ii) Scheduling compliance conference. If a recipient of a notice of violation contacts the department within fifteen (15) days of the receipt of the notice, the recipient shall be entitled to a compliance conference. The conference shall be held within twenty (20) days of the date of receipt of the notice, unless a later date is agreed upon between the parties. If a compliance conference is not requested, the director may proceed with a civil enforcement action as provided in paragraph (b) of this subsection.

(iii) Compliance conference. The compliance conference shall provide an opportunity for the recipient of a notice of violation to explain the circumstances of the alleged violation and, where appropriate, to present a proposal for remedying damage caused by the alleged violation and assuring future compliance.

(iv) Consent order. If the recipient and the director agree on a plan to remedy damage caused by the alleged violation and to assure future

compliance, they may enter into a consent order formalizing their agreement. The consent order may include a provision providing for payment of any agreed civil penalty.

(v) Effect of consent order. A consent order shall be effective immediately upon signing by both parties and shall preclude any civil enforcement action for the same alleged violation. If a party does not comply with the terms of the consent order, the director may seek and obtain, in any appropriate district court, specific performance of the consent order and such other relief as authorized in this chapter.

(vi) Failure to reach consent order. If the parties cannot reach agreement on a consent order within sixty (60) days after the receipt of the notice of violation or if the recipient does not request a compliance conference as per paragraph (a)(ii) of this subsection, the director may commence and prosecute a civil enforcement action in district court, in accordance with paragraph (b) of this subsection.

(b) Civil enforcement action. The director may initiate a civil enforcement action through the attorney general as provided in section 39-109, Idaho Code. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred and may be brought against any person who is alleged to have violated any provision of this act or any rule, permit or order which has become effective pursuant to this act. Such action may be brought to compel compliance with any provision of this act or with any rule, permit or order promulgated hereunder and for any relief or remedies authorized in this act. The director shall not be required to initiate or prosecute an administrative action before initiating a civil enforcement action.

(4) No civil or administrative proceeding may be brought to recover for a violation of any provision of this chapter or a violation of any rule, permit or order issued or promulgated pursuant to this chapter more than two (2) years after the director had knowledge or ought reasonably to have had knowledge of the violation.

(5) Monetary penalties.

(a) Any person determined in a civil enforcement action to have violated any provision of this act or any rule, permit or order promulgated pursuant to this act shall be liable for a civil penalty not to exceed the following amounts:

(i) For any violation of any provision of this act, rule, permit or order related to air quality: ten thousand dollars ($10,000) for each separate air violation and day of continuing air violation, whichever is greater;

(ii) For any violation of any provision of this act, rule, permit or order related to the Idaho national pollutant elimination system program: ten thousand dollars ($10,000) per violation or five thousand dollars ($5,000) for each day of a continuing violation, whichever is greater; or

(iii) For any violation of any provision of this act, rule, permit or order related to any other regulatory program authorized by this act: ten thousand dollars ($10,000) per violation or one thousand dollars ($1,000) for each day of a continuing violation, whichever is greater.

The method of recovery of said penalty shall be by a civil enforcement action in the district court in and for the county where the violation

occurred. All civil penalties collected under this act shall be paid into the general fund of the state. Parties to an administrative enforcement action may agree to a civil penalty as provided in this subsection.

(b) The imposition or computation of monetary penalties may take into account the seriousness of the violation, good faith efforts to comply with the law, and an enforceable commitment by the person against whom the penalty is directed to implement a supplemental environmental project. For purposes of this section, "supplemental environmental project" means a project which the person is not otherwise required to perform and which prevents pollution, reduces the amount of pollutants reaching the environment, contributes to public awareness of environmental matters or enhances the quality of the environment. In evaluating a particular supplemental environmental project proposal, preference may be given to those projects with an environmental benefit that relate to the violation or the objectives of the underlying statute that was violated or that enhances the quality of the environment in the general geographic location where the violation occurred.

(6) In addition to such civil penalties, any person who has been determined to have violated the provisions of this act or the rules, permits or orders promulgated thereunder shall be liable for any expense incurred by the state in enforcing the act, or in enforcing or terminating any nuisance, source of environmental degradation, cause of sickness or health hazard.

(7) No action taken pursuant to the provisions of this act or of any other environmental protection law shall relieve any person from any civil action and damages that may exist for injury or damage resulting from any violation of this act or of the rules, permits and orders promulgated thereunder.

(8) In addition to, and notwithstanding other provisions of this act, in circumstances of emergency creating conditions of imminent and substantial danger to the public health or environment, the prosecuting attorney or the attorney general may institute a civil action for an immediate injunction to halt any discharge, emission or other activity in violation of provisions of this act or rules, permits and orders promulgated thereunder. In such action the court may issue an ex parte restraining order.

(9) In any administrative or civil enforcement proceeding for violation of any Idaho NPDES program rule, permit, requirement or order, the department shall comply with the public participation requirements set forth in 40 CFR 123.27(d)(2).

History.

1972, ch. 347, § 8, p. 1017; am. 1974, ch. 23, § 52, p. 633; am. 1986, ch. 60, § 2, p. 169; am. 1993, ch. 275, § 5, p. 926; am. 1997, ch. 94, § 2, p. 219; am. 2000, ch. 132, § 16, p. 309; am. 2014, ch. 40, § 1, p. 92.

STATUTORY NOTES

Cross References.

Approval of state NPDES program, § 39-175C.

Amendments.

The 2014 amendment, by ch. 40, in paragraph (3)(a)(vi), substituted "subsection" for "section" twice and "paragraph (b)" for "subsection (b)"; rewrote the first sentence of (5)(a), which formerly read: "Any person determined in a civil enforcement action to have violated any provision of this act or any rule,

permit or order promulgated pursuant to this act shall be liable for a civil penalty not to exceed ten thousand dollars ($10,000) per violation or one thousand dollars ($1,000) for each day of a continuing violation, whichever is greater or ten thousand dollars ($10,000) for each separate air violation and day of continuing air violation"; and added subsection (8)

Compiler's Notes.

The term "this act" in subsection (1), subdivision (2)(b), the introductory paragraph in subdivision (5)(a), subsection (6), near the beginning of subsection (7), and in subsection (8), refers to S.L. 1972, ch. 347, which is compiled as §§ 39-101, 39-102, 39-105 to 39-107, 39-108, and 39-110 to 39-113.

The term "this act" in the introductory paragraph in subsection (3), in subdivision (3)(b), and near the end of subsection (7), refers to S.L. 1986, ch. 60, which is compiled as §§ 39-101, 39-108 to 39-111, 39-116, 39-117, and 39-118.

The term "this act" in paragraphs (5)(a)(i) through (5)(a)(iii) refers to S.L. 2014, ch. 40, which is compiled as §§ 39-108, 39-117, 39-175A, and 39-175C.

39-116B. Vehicle inspection and maintenance program. — (1) The board shall initiate rulemaking to provide for the implementation of a motor vehicle inspection and maintenance program to regulate and ensure control of the air pollutants and emissions from registered motor vehicles in an attainment or unclassified area as designated by the United States environmental protection agency, not otherwise exempted in subsection (7) of this section, if the director determines the following conditions are met:

(a) An airshed, as defined by the department, within a metropolitan statistical area, as defined by the United States office of management and budget, has ambient concentration design values equal to or above eighty-five percent (85%) of a national ambient air quality standard, as defined by the United States environmental protection agency, for three (3) consecutive years starting with the 2005 design value; and

(b) The department determines air pollutants from motor vehicles constitute one (1) of the top two (2) emission sources contributing to the design value of eighty-five percent (85%).

(2) In the event both of the conditions in subsection (1) of this section are met, the board shall establish by rule minimum standards for an inspection and maintenance program for registered motor vehicles, not otherwise exempted in subsection (7) of this section, which shall provide for:

(a) Counties and cities within the airshed that will be subject to the motor vehicle inspection and maintenance program;

(b) The requirements for licensing authorized inspection stations and technicians;

(c) The frequency with which inspections shall be required, provided that inspections shall occur no more than once every two (2) years;

(d) The procedures under which authorized inspection stations and technicians inspect motor vehicles and issue evidence of compliance;

(e) The criteria under which it is to be determined that a motor vehicle is eligible for a certificate of compliance;

(f) The parameters and diagnostic equipment necessary to perform the required inspection. The rules shall ensure that the equipment complies with any applicable standards of the United States environmental protection agency;

(g) A fee, bond or insurance which is necessary to carry out the provisions of this section and to fund an air quality public awareness and outreach

program. The fee for a motor vehicle inspection shall not exceed twenty dollars ($20.00) per vehicle;

(h) The issuance of a pamphlet for distribution to owners of motor vehicles explaining the reasons for and the methods of the inspections; and

(i) The granting of a waiver from the minimum standards as provided by rule, which may be based on model year, fuel, size, or other factors, which shall include, but not be limited to, a repair waiver and a hardship waiver.

(3) In the event both of the conditions in subsection (1) of this section are met, the director shall attempt to enter into a joint exercise of powers agreement under sections 67-2326 through 67-2333, Idaho Code, with the board of county commissioners of each county within the airshed in which a motor vehicle inspection and maintenance program is required under this section, and the councils of incorporated cities within those counties, to develop a standardized inspection and maintenance program. If the board of county commissioners or the councils of incorporated cities within those counties choose not to enter into a joint exercise of powers agreement with the director, then within one hundred twenty (120) days of the director's written request to enter into such an agreement, the board of county commissioners or the councils of incorporated cities may notify the department that it will implement an alternative motor vehicle emission control strategy that will result in emissions reductions equivalent to that of a vehicle emission inspection program. If the department determines the emissions reductions of the alternative motor vehicle emission control strategy are not equivalent, or no equivalent reductions are proposed, the department or its designee shall implement the motor vehicle inspection and maintenance program required pursuant to the provisions of this section.

(4) The Idaho transportation department shall revoke the registration of any motor vehicle identified by the department or its designee, or any city or county administering a program established under the provisions of this section as having failed to comply with such motor vehicle inspection and maintenance program, except that no vehicle shall be identified to the Idaho transportation department unless:

(a) The department or its designee, or the city or county certifies to the Idaho transportation department that the owner of the motor vehicle has been given notice and had the opportunity for a hearing concerning the program and has exhausted all remedies and appeals from any determination made at such hearing; and

(b) The department or its designee, or the city or county reimburses the Idaho transportation department for all direct costs associated with the registration revocation procedure.

Any vehicle registration that has been revoked pursuant to the provisions of this section that is found to be in compliance with current emissions standards shall have the registration reinstated without charge.

(5) The department shall annually review the results of the vehicle inspection and maintenance program. The review shall include, among other things, an estimate of the emission reduction obtained from the

number of vehicles that initially fail the test and then pass after maintenance.

(6) Every five (5) years beginning in 2013, the director shall review the air quality data and make recommendations to the legislature for its determination whether a program initially established pursuant to the provisions of this section should be continued, modified or terminated.

(7) Electric or hybrid motor vehicles, new motor vehicles less than five (5) years old, classic automobiles, motorized farm equipment and registered motor vehicles engaged solely in the business of agriculture, shall be exempt from any motor vehicle inspection and maintenance program established pursuant to the provisions of this section.

History.
I.C., § 39-116B, as added by 2008, ch. 368, § 1, p. 1007; am. 2011, ch. 329, § 1, p. 964; am. 2012, ch. 252, § 1, p. 695.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 252, added "which shall include, but not be limited to, a repair waiver and a hardship waiver" at the end of paragraph (2)(i); and, in subsection (6), substituted "in 2013" for "with the implementation of the program" and substituted "make recommendations to the legislature for its determination whether" for "determine whether."

39-117. Criminal violation — Penalty. — (1) Any person who willfully or negligently violates any of the provisions of the non-air quality public health or environmental protection laws or the terms of any lawful notice, order, permit, standard, rule or regulation issued pursuant thereto shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars ($10,000) for each separate violation or one thousand dollars ($1,000) per day for continuing violations, whichever is greater.

(2) Any person who knowingly violates any of the provisions of the air quality public health or environmental protection laws or the terms of any lawful notice, order, permit, standard or rule issued pursuant thereto shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars ($10,000) per day per violation. In addition, any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 112 of the federal clean air act, 42 U.S.C. 7412, or any extremely hazardous substance listed pursuant to 42 U.S.C. 11002(a)(2) that is not listed under section 112, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine of not more than two hundred fifty thousand dollars ($250,000) per day, or by imprisonment of not more than fifteen (15) years or both such fine and imprisonment. Any person committing such violation that is an organization shall, upon conviction under this subsection, be subject to a fine of not more than one million dollars ($1,000,000) for each violation. For any air pollutant for which the environmental protection agency or the board of environmental quality has set an emissions standard or for any source for which a permit has been issued under title V of the clean air act amend-

ments of 1990, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of the provisions of this subsection.

(3) Any person who willfully or negligently violates any Idaho national pollutant discharge elimination system (NPDES) standard or limitation, permit condition or filing requirement shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars ($10,000) per violation or for each day of a continuing violation. Any person who knowingly makes any false statement, representation or certification in any Idaho NPDES form, in any notice or report required by an NPDES permit, or who knowingly renders inaccurate any monitoring device or method required to be maintained shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five thousand dollars ($5,000) per violation or for each day of a continuing violation.

History.

I.C., § 39-117, as added by 1973, ch. 137, § 1, p. 268; am. 1986, ch. 60, § 8, p. 169; am. 1993, ch. 275, § 7, p. 926; am. 1998, ch. 125, § 3, p. 461; am. 2014, ch. 40, § 2, p. 92.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 40, substituted " board of environmental quality" for "board of health and welfare" in the last sentence of subsection (2) and added subsection (3).

Federal References.

Title V of the federal clean air act, referred to in subsection (2), is compiled as 42 USCS § 7661 et seq.

39-120. Department of environmental quality primary administrative agency — Agency responsibilities.

RESEARCH REFERENCES

Idaho Law Review. — A Primer on Groundwater Law, Joseph W. Dellapenna. 49 Idaho L. Rev. 265 (2013).

39-121. Definitions.

RESEARCH REFERENCES

Idaho Law Review. — A Primer on Groundwater Law, Joseph W. Dellapenna. 49 Idaho L. Rev. 265 (2013).

39-126. Duties of state and local units of government.

RESEARCH REFERENCES

Idaho Law Review. — A Primer on Groundwater Law, Joseph W. Dellapenna. 49 Idaho L. Rev. 265 (2013).

39-127. Application of fertilizers and pesticides.

RESEARCH REFERENCES

Idaho Law Review. — A Primer on Groundwater Law, Joseph W. Dellapenna. 49 Idaho L. Rev. 265 (2013).

39-173. Committee — Members — Terms. — As needed, to fulfill the duties described in section 39-174, Idaho Code, the director may appoint a committee that consists of seven (7) individuals and includes:

(1) One (1) representative of the department of environmental quality, who will provide administrative and other support to the committee.

(2) Two (2) representatives of the public health districts which have mill yard or wood debris within their districts.

(3) Two (2) representatives from industries generating wood or mill yard debris.

(4) Two (2) members with demonstrated technical knowledge important to the work of the committee.

Committee members shall be appointed to serve three (3) year terms. No member may serve more than two (2) full terms. Members serve at the pleasure of the director.

Members of the committee shall serve without compensation pursuant to section 59-509(a), Idaho Code.

History.
I.C., § [39-173] 39-168, as added by 1996, ch. 204, § 3, p. 627; am. and redesig. 2001, ch. 103, § 17, p. 253; am. 2013, ch. 16, § 1, p. 26.

STATUTORY NOTES

Cross References.
Department of environmental quality, § 39-104.

Amendments.
The 2013 amendment, by ch. 16, rewrote the introductory paragraph, which formerly read: "The director shall appoint a committee to develop guidance on the use, storage, management and disposal of mill yard or wood debris. This committee shall consist of seven (7) individuals and shall include."

39-174. Committee duties — Meetings. — The committee's duties shall include:

(1) Developing a manual providing guidance for the use, storage, management and disposal of wood or mill yard debris to prevent public nuisances and minimize or prevent harmful environmental impacts. Guidance provided by the manual may be incorporated or adopted by reference in the rules of the department or other appropriate state agencies.

(2) Considering and developing specific solutions to unforeseen wood or mill yard debris use, storage, management or disposal as needed.

(3) Developing and sharing knowledge related to the use, storage, management and disposal of wood or mill yard debris including ways to constructively use or reclaim the debris.

(4) Making recommendations for any necessary permits, rules or legislation related to the use, storage, management or disposal of wood or mill yard debris.

The committee shall meet on an as needed basis to implement the purpose of sections 39-171 through 39-174, Idaho Code. A committee member or member of the public may request a meeting by sending a written request to the department describing the reason for the meeting, or the department may schedule a meeting at the discretion of the director. Upon receiving the request, the department shall contact all committee members and arrange a time and place most convenient to the majority of the members. Meetings may be conducted using telephonic devices or other methods that allow adequate communication among members.

History.
I.C., § [39-174] 39-169, as added by 1996, ch. 204, § 4, p. 627; am. and redesig. 2001, ch. 103, § 18, p. 253; am. 2013, ch. 16, § 2, p. 26.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 16, rewrote the last paragraph, which formerly read: "The committee shall meet at least two (2) times a year at a time and place most convenient to the majority of members."

39-175A. Legislative findings and purposes. — (1) The legislature finds:

(a) That navigable waters within the state are one of the state's most valuable natural resources;

(b) That it is in the public interest to promote effective and efficient regulation of the discharge of pollutants into navigable waters, and that the state should control such permitting decisions as authorized under the federal clean water act;

(c) That the clean water act allows a state to develop and implement, with approval from the United States environmental protection agency, a national pollutant discharge elimination system (NPDES) program to be administered by the state;

(d) That the clean water act, as amended, and regulations adopted pursuant thereto, establishes complex and detailed provisions for regulation of those who discharge pollutants into navigable waters;

(e) That a state program to implement permitting decisions as authorized in the clean water act, and regulations adopted pursuant thereto, may enable the state to issue flexible permits consistent with the clean water act and avoid the existence of duplicative, overlapping or conflicting state and federal regulatory and enforcement processes;

(f) That a state program must be run with a minimum of federal interference in permitting, inspection and enforcement activities and that all state permitting actions under the approved state program are to be state actions and are not subject to consultation under the endangered species act or analysis under the provisions of the national environmental policy act. There should be no conditions of approval of the state program that have the effect of undermining or circumventing these principles;

(g) That the decision to accept delegation of authority from the environmental protection agency to operate an NPDES program has significant public policy implications that should be made by the legislature.

(2) Therefore, it is the intent of the legislature to establish requirements

that must be satisfied prior to legislative approval of a permitting program that complies with the clean water act and incorporates flexible permitting procedures and rules to be promulgated by the board.

History.
I.C., § 39-175A, as added by 2005, ch. 57, § 1, p. 211; am. 2014, ch. 40, § 3, p. 92.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 40, substituted "federal regulatory and enforcement processes" for "federal regulatory systems" at the end of paragraph (1)(e).

Federal References.
The federal clean water act, referred to throughout this section, is codified as 33 U.S.C.S. § 1251 et seq.

The endangered species act, referred to in subdivision (1)(f), is codified as 16 USCS § 1531 et seq.

The national environmental policy act, referred to in subdivision (1)(f), is codified as 42 USCS § 4321 et seq.

Compiler's Notes.
The letters "NPDES" enclosed in parentheses so appeared in the law as enacted.

RESEARCH REFERENCES

Idaho Law Review. — One Bird Causing a Big Conflict: Can Conservation Agreements Keep Sage Grouse off the Endangered Species List?, Comment. 49 Idaho L. Rev. 621 (2013).

39-175C. Approval of state NPDES program. — (1) The department is authorized to pursue approval of an NPDES program consistent with the requirements of this section. The department shall submit a complete application consistent with the requirements of the clean water act and 40 CFR 123 to the environmental protection agency to obtain approval for a state NPDES program by September 1, 2016.

(2) The board is authorized to proceed with negotiated rulemaking and all other actions that may eventually be necessary to obtain approval of a state NPDES program by the United States environmental protection agency including rules authorizing the collection of reasonable fees for processing and implementing an NPDES permit program. Such fees shall not be assessed or collected until the state obtains an approved NPDES program consistent with the requirements of this section.

(3) Any memorandum of agreement executed by the director to obtain approval to operate a state NPDES program shall not be binding on the state of Idaho unless authorized by enactment of a statute. Any memorandum of agreement not authorized in the above manner shall be of no force and effect.

(4) Implementation of a state NPDES program shall not occur prior to statutory enactment of implementing legislation and authorization of a memorandum of agreement as specified in subsection (3) of this section.

(5) The director, as appropriate, shall establish agreements with other state agencies with expertise to administer the NPDES program.

(6) No provision of this chapter shall be interpreted as to supersede, abrogate, injure or create rights to divert or store water and apply water to beneficial uses established under section 3, article XV, of the constitution of the state of Idaho, and title 42, Idaho Code.

(7) Nothing in this section is intended to supersede any existing agreements between federal, state or local agencies regarding authority over inspections, enforcement or other obligations under the clean water act.

History.
I.C., § 39-175C, as added by 2005, ch. 57, § 1, p. 211; am. 2014, ch. 40, § 4, p. 92.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 40, rewrote subsection (1), which formerly read: "The department is authorized to explore whether the state should operate an NPDES program by evaluating the costs and benefits to the state, of such a program, consistent with the requirements of this section. The department shall prepare a report to the legislature as to its findings by December 31, 2005"; added "including rules authorizing the collection of reasonable fees for processing and implementing an NPDES permit program. Such fees shall not be assessed or collected until the state obtains an approved NPDES program consistent with the requirements of this section" at the end of subsection (2); deleted former subsection (3), relating to the execution of a memorandum of agreement with the federal EPA , inserted present subsection (5), and redesignated the subsequent subsections accordingly; and updated a reference in present subsection (4).

Federal References.
The clean water act, referred to in subsections (1) and (7), is codified as 33 U.S.C.S. § 1251 et seq.

CHAPTER 2
VITAL STATISTICS

VITAL STATISTICS ACT

VITAL STATISTICS ACT

39-241. Definitions. — For the purposes of this chapter and this chapter only, the following terms shall be construed to have the meanings hereinafter set forth:

(1) "Adoptive parent" means an adult who has become a parent of a child through the legal process of adoption.

(2) "Advanced practice registered nurse" means a registered nurse licensed in this state who has gained additional specialized knowledge, skills and experience as defined in section 54-1402, Idaho Code, and includes the following four (4) roles: certified nurse midwife; clinical nurse specialist; certified nurse practitioner; and certified registered nurse anesthetist as defined by the applicable board of nursing rule.

(3) "Board" means the Idaho state board of health and welfare.

(4) "Certified copy" means the reproduction of an original vital record by typewritten, photographic or electronic means. Such reproductions, when certified by the state registrar, shall be used as the original.

(5) "Consent" means a verified written statement which has been notarized.

(6) "Dead body" means a lifeless human body or such parts of the human body or the bones thereof from the state of which it reasonably may be concluded that death occurred.

(7) "Director" means the director of the department of health and welfare.

(8) "Fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy; the death is indicated by the fact that after such expulsion or extraction, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(a) "Induced termination of pregnancy (induced abortion)" means the purposeful interruption of pregnancy with an intention other than to produce a live-born infant or to remove a dead fetus and which does not result in a live birth.

(b) "Spontaneous fetal death" means the expulsion or extraction of a product of human conception resulting in other than a live birth and which is not an induced termination of pregnancy.

(9) "Identifying information" includes the following information:

(a) The name of the qualified adoptee before placement in adoption;

(b) The name and address of each qualified birthparent as it appears in birth records;

(c) The current name, address and telephone number of the qualified adult adoptee; and

(d) The current name, address and telephone number of each qualified birthparent.

(10) "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes, or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. Heartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps.

(11) "Person in charge of interment" means any person who places or causes to be placed a stillborn fetus or dead body or the ashes of the same, after cremation, in a grave, vault, urn, or other receptacle, or otherwise disposes thereof.

(12) "Physician" means a person legally authorized to practice medicine and surgery, osteopathic medicine and surgery or osteopathic medicine in this state as defined in section 54-1803, Idaho Code.

(13) "Physician assistant" means any person who is a graduate of an acceptable training program and who is otherwise qualified to render patient services as defined in section 54-1803, Idaho Code.

(14) "Qualified adult adoptee" means an adopted person eighteen (18) years of age or older who was born in Idaho.

(15) "Qualified adult birth sibling" means a genetic, biological, or natural

brother or sister or half-brother or half-sister, eighteen (18) years of age or older.

(16) "Qualified birthparent" means a genetic, biological, or natural parent whose rights were voluntarily or involuntarily terminated by a court or otherwise. "Birthparent" includes a man who is the parent of a child prior to the termination of parental rights.

(17) "Record" means the original certificate of an event and any replacement thereof filed for record by virtue of authority contained in this chapter, as well as instruments of any nature provided by this chapter as a means of effecting replacement of certificates.

(18) "Registrar" means the state registrar of vital statistics or a designated representative.

(19) "Relative" includes only an individual's spouse, birthparent, adoptive parent, sibling, or child who is eighteen (18) years of age or older.

(20) "Stillbirth" means a spontaneous fetal death of twenty (20) completed weeks gestation or more, based on a clinical estimate of gestation, or a weight of three hundred fifty (350) grams (twelve and thirty-five hundredths (12.35) ounces) or more.

(21) "Vital statistics" includes the registration, preparation, transcription, collection, compilation and preservation of data pertaining to births, adoptions, legitimations, deaths, stillbirths, induced terminations of pregnancy, marital status and data incidental thereto.

(22) "Voluntary adoption registry" or "registry" means a place where eligible persons, as described in section 39-259A, Idaho Code, may indicate their willingness to have their identity and whereabouts disclosed to each other under conditions specified in section 39-259A, Idaho Code.

History.

1949, ch. 72, § 1, p. 117; am. 1959, ch. 104, § 2, p. 221; am. 1974, ch. 23, § 61, p. 633; am. 1983, ch. 7, § 2, p. 23; am. 1985, ch. 59, § 1, p. 112; am. 2002, ch. 277, § 1, p. 809; am. 2007, ch. 243, § 1, p. 715; am. 2014, ch. 45, § 1, p. 117.

STATUTORY NOTES

Cross References.

Board of health and welfare, § 56-1005.

State registrar of vital statistics, § 39-243.

Amendments.

The 2014 amendment, by ch. 45, rewrote subsection (2), which formerly read: ""Advanced practice professional nurse" means a professional nurse licensed in this state who has gained additional specialized knowledge, skills and experience through a nationally accredited program of study and is authorized to perform advanced nursing practice as defined in section 54-1402, Idaho Code, and includes certified nurse midwives and nurse practitioners as defined in the same section".

39-250. Completion and correction of certificates — Procedure — Other alterations prohibited.

RESEARCH REFERENCES

Idaho Law Review. — Way out West: A Comment Surveying Idaho State's Legal Protection of Transgender and Gender Non-Conforming Individuals, Comment. 49 Idaho L. Rev. 587 (2013).

39-258. Adoption of persons born in Idaho — New birth certificate issued to replace original certificate — Procedure — Adoption proceedings not open to inspection with certain exceptions — Duties of the clerks of courts issuing adoption decrees — Duties of state registrar of vital statistics. — (a) Whenever a final decree of adoption, issued by an Idaho court, declares a person born in Idaho to be adopted by someone other than his or her natural parents, the court shall require the preparation of a report (denominated as a certificate in accordance with Idaho court rules) of adoption on a form prescribed and furnished by the state registrar. The report shall include such facts as are necessary to locate and identify the certificate of birth of the person adopted; shall provide information necessary to establish a new certificate of birth for the person adopted; and shall identify the order of adoption and be certified by the clerk of the court.

(b) Information necessary to prepare the report of adoption shall be furnished by each petitioner for adoption or the petitioner's attorney. The provision of such information shall be prerequisite to the issuance of a final decree in the matter of the court.

(c) The report of adoption shall, within fifteen (15) days after becoming final, be recorded by the clerk of the court with the vital statistics unit in the state department of health and welfare.

(d) If a court of some other state issued a decree or report of adoption of a person actually born in Idaho, the certified copy or report may be similarly filed by the person involved or by the adoptive parents. Failure to file certified copies or reports of said decrees within said period of time, however, shall not bar issuance of a new birth certificate as hereinafter provided. This copy of said decree or report shall be filed with and remain a part of the records of the vital statistics unit.

(e) Upon receipt by the vital statistics unit of the certified report of adoption, a new certificate of birth shall be issued (but only in cases where such person's birth is already recorded with the vital statistics unit) bearing among other things the name of the person adopted, as shown in the report of adoption, except that a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adopted person. No such birth certificate shall have reference to the adoption of said person. Such birth certificate shall supplant and constitute a replacement of any birth certificate previously issued for said person and shall be the only birth certificate open to public inspection.

Provided however, upon good cause shown and the affidavit of the adoptive parents that a diligent search has been made, but no certificate of birth for the adoptive child can be located, the magistrate judge may order the adoptive child examined, at the expense of the adoptive parents, by a doctor of medicine licensed by the state of Idaho. The examination will be conducted pursuant to rules promulgated by the state board of health and welfare for the purpose of determining those matters required for the issuance of an original birth certificate. Upon the examination of the doctor made pursuant to the rules of the state board of health and welfare, the court may order the vital statistics unit to issue an original birth certificate

for the adoptive child based upon those facts determined by the examination and included in the court's order. In such case a certified copy of the court order shall be provided to the vital statistics unit.

(f) In respect to form and nature of contents, such a new birth certificate shall be identical with a birth certificate issued to natural parents for the birth of a child, except that the adoptive parents shall be shown as parents and the adopted person shall have the name assigned by the decree of adoption as shown on the report of adoption. In a case where a single person adopts another person, any new birth certificate may designate the adopting parent as adoptive.

(g) Whenever an adoption decree is amended, annulled or rescinded, the clerk of the court shall forward a certified copy of the amendment, annulment or rescindment to the vital statistics unit in accordance with the time provisions in subsection (c) of this section. Unless otherwise directed by the court, the vital statistics unit shall amend the certificate of birth upon receipt of a certified copy of an amended decree of adoption. Upon receipt of a certified copy of a decree of annulment or rescindment of adoption, the original certificate of birth shall be restored to its place in the files and the new certificate and evidence shall not be subject to inspection except upon order of a court of record of this state.

(h) All records and information specified in this section other than a new birth certificate issued hereunder, and all records, files and information of any court in this state relating to adoption proceedings, shall not be open to inspection except as provided in section 39-259A, Idaho Code, or upon the order of a court of record of this state; provided however, that the provisions of section 16-1616, Idaho Code, to the contrary notwithstanding, any magistrate judge may furnish a certified copy of a decree of adoption to any duly authorized agency of the United States or the state of Idaho without procuring any prior court order therefor.

History.

I.C., § 39-218, as replaced by 1959, ch. 104, § 1, p. 221; am. 1965, ch. 208, § 1, p. 477; am. 1974, ch. 23, § 60, p. 633; am. and redesig. 1983, ch. 7, § 18, p. 23; am. 1985, ch. 59, § 2, p. 112; am. 2005, ch. 391, § 53, p. 192; am. 2012, ch. 20, § 21, p. 66.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 20, substituted "magistrate judge" for "probate judge" in the first sentence of the second paragraph in subsection (e) and substituted "magistrate judge" for "probate court, or the judge thereof" near the end of subsection (h).

39-260. Registration of deaths and stillbirths. — (1) A certificate of each death which occurs in this state shall be filed with the local registrar of the district in which the death occurs, or as otherwise directed by the state registrar, within five (5) days after the occurrence. However, the board shall, by rule and upon such conditions as it may prescribe to assure compliance with the purposes of the vital statistics act, provide for the filing of death certificates without medical certifications of cause of death in cases in which compliance with the applicable prescribed period would result in

undue hardship; but provided, however, that medical certifications of cause of death shall be provided by the certifying physician, physician assistant, advanced practice registered nurse or coroner to the vital statistics unit within fifteen (15) days from the filing of the death certificate. No certificate shall be deemed complete until every item of information required shall have been provided or its omission satisfactorily accounted for. When death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state and the place where the body is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international airspace or in a foreign country or its airspace and the body is first removed from the conveyance in this state, the death shall be registered in this state but the certificate shall show the actual place of death insofar as can be determined. If the place of death is unknown but the dead body is found in this state, the certificate of death shall be completed and filed in accordance with this section. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be determined by approximation.

The person in charge of interment or of removal of the body from the district shall be responsible for obtaining and filing the certificate. Said person shall obtain the required information from the following persons, over their respective signatures:

(a) Personal data shall be supplied by the person best qualified to supply them; and

(b) Except as otherwise provided, medical data shall be supplied by the physician, physician assistant or advanced practice registered nurse who attended the deceased during the last illness, who shall certify to the cause of death according to his best knowledge, information and belief within seventy-two (72) hours from time of death. In the absence of the attending physician, physician assistant or advanced practice registered nurse or with said person's approval the certificate may be completed and signed by said person's associate, who must be a physician, physician assistant or advanced practice registered nurse, the chief medical officer of the institution in which death occurred, or the physician who performed an autopsy upon the decedent, provided such individual has access to the medical history of the case, views the deceased at or after death, and death is due to natural causes.

(2) The person in charge of interment or of removal of the body from the district shall refer the following cases to the coroner who shall make an immediate investigation, supply the necessary medical data, and certify to the cause of death:

(a) When no physician, physician assistant or advanced practice registered nurse was in attendance during the last illness of the deceased;

(b) When the circumstances suggest that the death occurred as a result of other than natural causes; or

(c) When death is due to natural causes and the physician, physician assistant or advanced practice registered nurse who attended the deceased during the last illness or said person's designated associate who

must be a physician, physician assistant or advanced practice registered nurse, is not available or is physically incapable of signing.

(3) When a death is presumed to have occurred within this state but the body cannot be located, a death certificate may be prepared by the state registrar upon receipt of an order of a court of record of this state, which shall include the finding of facts required to complete the death certificate. Such a death certificate shall be marked "presumptive" and shall show on its face the date of registration and shall identify the court and the date of decree.

(4) Each stillbirth, defined as a spontaneous fetal death of twenty (20) completed weeks gestation or more, based on a clinical estimate of gestation, or a weight of three hundred fifty (350) grams (twelve and thirty-five hundredths (12.35) ounces) or more, which occurs in this state shall be registered on a certificate of stillbirth within five (5) days after delivery with the local registrar of the district in which the stillbirth occurred. All induced terminations of pregnancy shall be reported in the manner prescribed in section 39-261, Idaho Code, and shall not be reported as stillbirths. No certificate shall be deemed complete until every item of information required shall have been provided or its omission satisfactorily accounted for.

(a) When a stillbirth occurs in an institution, the person in charge of the institution or a designated representative shall prepare the certificate, obtain the signature of the physician, physician assistant or advanced practice registered nurse in attendance, except as otherwise provided in subsection (5) of this section, who shall provide the medical data, and forward the certificate to the mortician or person acting as such. In the absence of the attending physician, physician assistant or advanced practice registered nurse or with said person's approval the certificate may be completed and signed by said person's associate, who must be a physician, physician assistant or advanced practice registered nurse, the chief medical officer of the institution in which the stillbirth occurred, or the physician who performed an autopsy on the stillborn fetus, provided such individual has access to the medical history of the case and views the fetus at or after stillbirth. The mortician or person acting as such shall provide the disposition information and file the certificate with the local registrar.

(b) When a stillbirth occurs outside an institution, the mortician or person acting as such shall complete the certificate, obtain the medical data from and signature of the attendant at the stillbirth, except as otherwise provided in subsection (5) of this section, and file the certificate. If the attendant at or immediately after the stillbirth is not a physician, physician assistant or advanced practice registered nurse, the coroner shall investigate and sign the certificate of stillbirth.

(c) When a stillbirth occurs in a moving conveyance in the United States and the stillborn fetus is first removed from the conveyance in this state, the stillbirth shall be registered in this state and the place where the stillborn fetus is first removed shall be considered the place of stillbirth. When a stillbirth occurs in a moving conveyance while in international airspace or in a foreign country or its airspace and the stillborn fetus is

first removed from the conveyance in this state, the stillbirth shall be registered in this state but the certificate shall show the actual place of stillbirth insofar as can be determined.

(d) When a stillborn fetus is found in this state and the place of stillbirth is unknown, it shall be reported in this state. The place where the stillborn fetus was found shall be considered the place of stillbirth.

(e) The name of the father shall be entered on the certificate of stillbirth as provided by section 39-255, Idaho Code.

(5) The person responsible for the preparation or completion of the stillbirth certificate as stated in subsection (4)(a) and (b) of this section shall refer the following cases to the coroner who shall make an immediate investigation, supply the necessary medical data and certify to the cause of stillbirth:

(a) When the circumstances suggest that the stillbirth occurred as a result of other than natural causes, excepting legally induced abortions, as defined by section 39-241, Idaho Code; or

(b) When death is due to natural causes and the physician, physician assistant or advanced practice registered nurse in attendance at or immediately after the stillbirth or said person's designated associate is not available or is physically incapable of signing.

History.

1949, ch. 72, § 18, p. 117; am. 1972, ch. 111, § 1, p. 226; am. and redesig. 1983, ch. 7, § 20, p. 23; am. 1995, ch. 28, § 2, p. 42; am. 2002, ch. 277, § 2, p. 809; am. 2007, ch. 244, § 1, p. 719; am. 2014, ch. 45, § 2, p. 117.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 45, substituted "advanced practice registered nurse" for "advanced practice professional nurse" throughout the section.

39-268. Authorization for final disposition. — (1) The mortician or person acting as such who first assumes possession of a dead body or stillborn fetus shall make a written report to the registrar of the district in which death or stillbirth occurred or in which the body or stillborn fetus was found within twenty-four (24) hours after taking possession of the body or stillborn fetus, on a form prescribed and furnished by the state registrar and in accordance with rules promulgated by the board. Except as specified in subsection (2) of this section, the written report shall serve as permit to transport, bury or entomb the body or stillborn fetus within this state, provided that the mortician or person acting as such shall certify that the physician, physician assistant or advanced practice registered nurse in charge of the patient's care for the illness or condition which resulted in death or stillbirth has been contacted and has affirmatively stated that said physician, physician assistant or advanced practice registered nurse or the designated associate according to section 39-260(1)(b) or (4)(a), Idaho Code, will sign the certificate of death or stillbirth.

(2) The written report as specified in subsection (1) of this section shall not serve as a permit to:

(a) Remove a body or stillborn fetus from this state;

(b) Cremate the body or stillborn fetus; or

(c) Make disposal or disposition of any body or stillborn fetus in any manner when inquiry is required under chapter 43, title 19, Idaho Code, or section 39-260(2) or (5), Idaho Code.

(3) In accordance with the provisions of subsection (2) of this section, the mortician or person acting as such who first assumes possession of a dead body or stillborn fetus shall obtain an authorization for final disposition prior to final disposal or removal from the state of the body or stillborn fetus. The physician, physician assistant, advanced practice registered nurse or coroner responsible for signing the death or stillbirth certificate shall authorize final disposition of the body or stillborn fetus, on a form prescribed and furnished by the state registrar. If the body is to be cremated, the coroner must also give additional authorization. In the case of stillbirths, the hospital may dispose of the stillborn fetus if the parent(s) so requests; authorization from the coroner is not necessary unless the coroner is responsible for signing the certificate of stillbirth.

(4) When a dead body or stillborn fetus is transported into the state, a permit issued in accordance with the law of the state in which the death or stillbirth occurred or in which the body or stillborn fetus was found shall authorize the transportation and final disposition within the state of Idaho.

(5) A permit for disposal shall not be required in the case of a dead fetus of less than twenty (20) weeks gestation and less than three hundred fifty (350) grams or twelve and thirty-five hundredths (12.35) ounces where disposal of the fetal remains is made within the institution where the delivery of the dead fetus occurred.

History.
1949, ch. 72, § 20, p. 117; am. 1972, ch. 123, § 1, p. 243; am. and redesig. 1983, ch. 7, § 30, p. 23; am. 2007, ch. 244, § 2, p. 719; am. 2014, ch. 45, § 3, p. 117.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 45, substituted "advanced practice registered nurse" for "advanced practice professional nurse" throughout the section.

CHAPTER 3

ALCOHOLISM AND INTOXICATION TREATMENT ACT

39-302. Definitions. — As used in this chapter, the terms defined in this section shall have the following meanings, unless the context clearly indicates another meaning:

(1) "Addiction" or "alcoholism" means a primary, chronic, neurobiological disease with genetic, psychosocial and environmental factors influencing its development and manifestations. It is characterized by behaviors that

include one (1) or more of the following: impaired control over drug or alcohol use, compulsive use, continued use despite harm, and craving.

(2) "Alcoholic" means a person who has the disease of alcoholism, which is characterized by behaviors that include one (1) or more of the following: impaired control over alcohol use, compulsive use, continued use despite harm, and craving.

(3) "Approved private treatment facility" means a private agency meeting the standards prescribed in section 39-305(1), Idaho Code, and approved under the provisions of section 39-305(3), Idaho Code, and rules promulgated by the board of health and welfare pursuant to this chapter.

(4) "Approved public treatment facility" means a treatment agency operating under the provisions of this chapter through a contract with the department of health and welfare pursuant to section 39-304(7), Idaho Code, and meeting the standards prescribed in section 39-305(1), Idaho Code, and approved pursuant to section 39-305(3), Idaho Code, and rules promulgated by the board of health and welfare pursuant to this chapter.

(5) "Department" means the Idaho department of health and welfare.

(6) "Director" means the director of the Idaho department of health and welfare.

(7) "Drug addict" means a person who has the disease of addiction, which is characterized by behaviors that include one (1) or more of the following: impaired control over drug use, compulsive use, continued use despite harm, and craving.

(8) "Incapacitated by alcohol or drugs" means that a person, as a result of the use of alcohol or drugs, is unconscious or has his judgment otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.

(9) "Incompetent person" means a person who has been adjudged incompetent by an appropriate court within this state.

(10) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of drugs or alcohol.

(11) "Recovery support services" means those ancillary, nonclinical services needed for a client to maintain substance abuse or addiction recovery. These services may include transportation, childcare, drug testing, safe and sober housing and care management.

(12) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or substances.

(13) "Treatment" means the broad range of emergency, outpatient, intensive outpatient, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and intoxicated persons and/or drug addicts.

History.

I.C., § 39-302, as added by S.L. 1975, ch. 149, § 1, p. 376; am. 1987, ch. 289, § 2, p. 610; am. 2006, ch. 407, § 1, p. 1232; am. 2008, ch. 94, § 1, p. 259; am. 2012, ch. 107, § 3, p. 284.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 107, deleted former subsection (10), the definition of "interagency committee," and renumbered the subsequent subsections accordingly.

39-303A. Regional advisory committees. — Regional advisory committees that address substance abuse issues shall be established by the department of health and welfare. The regional advisory committees shall be composed of regional directors of the department or their designees, regional substance abuse program staff and representatives of other appropriate public and private agencies. Members shall be appointed by the respective regional directors for terms determined by the regional director. The committees shall meet at least quarterly at the call of the chair, who shall also be appointed by the regional director. The committees shall provide for the coordination of, and exchange of information on, all programs relating to alcoholism and drug addiction and shall act as liaison among the departments engaged in activities affecting alcoholics and intoxicated persons.

History.

I.C., § 39-303A, as added by 1989, ch. 282, § 2, p. 691; am. 2006, ch. 407, § 4, p. 1232; am. 2012, ch. 107, § 4, p. 284.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 107, deleted the "(1)" designation from the first paragraph; and deleted former subsection (2), which read: "The chairpersons of each regional advisory committee shall collectively meet at least annually and elect one (1) of its members to serve as the regional advisory committees' representative on the interagency committee. Each regional advisory committee shall provide to the regional advisory committees' representative, before each regular meeting of the interagency committee, a report addressing local substance abuse program needs and other information as it pertains to the treatment and prevention of alcoholism and other drug addiction or as required by the chairperson of the interagency committee. The regional advisory committees' representative shall be responsible for communicating information from these reports at each regular meeting of the interagency committee."

39-304. Comprehensive program for treatment. — The Idaho department of health and welfare is hereby designated as the state substance abuse authority.

(1) The department shall establish a comprehensive and coordinated program for the treatment of alcoholics, intoxicated persons and drug addicts.

(2) The program shall include:

(a) Emergency detoxification treatment and medical treatment directly related thereto provided by a facility affiliated with or part of the medical service of a general hospital;

(b) Inpatient treatment;

(c) Intensive outpatient treatment;

(d) Outpatient treatment;

(e) Community detoxification provided by an approved facility; and

(f) Recovery support services.

(3) The department shall provide for adequate and appropriate treatment

for persons admitted pursuant to section 39-307, Idaho Code. Treatment shall not be provided at a correctional institution except for inmates.

(4) The department shall maintain, supervise, and control all facilities operated by it. The administrator of each such facility shall make an annual report of its activities to the director in the form and manner the director specifies.

(5) All appropriate public and private resources shall be coordinated with and utilized in the program whenever possible.

(6) The department shall prepare, publish and distribute annually a list of all approved public and private treatment facilities.

(7) The department may contract for the use of any facility as an approved public treatment facility if the director considers this to be an effective and economical course to follow.

(8) The program shall include an individualized treatment plan prepared and maintained for each client.

History.

I.C., § 39-304, as added by S.L. 1975, ch. 149, § 1, p. 376; am. 1987, ch. 289, § 4, p. 610; am. 1989, ch. 282, § 3, p. 691; am. 2006, ch. 407, § 5, p. 1232; am. 2007, ch. 69, § 3, p. 183; am. 2008, ch. 94, § 2, p. 260; am. 2012, ch. 107, § 5, p. 284.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 107, deleted the former second sentence in subsection (1), which read: "The interagency committee shall direct the department in the establishment and in the content of this program."

CHAPTER 6

CONTROL OF VENEREAL DISEASES

SECTION.

39-601. Venereal diseases enumerated. — Syphilis, gonorrhea, human immunodeficiency virus (HIV), chlamydia and hepatitis B virus (HBV), hereinafter designated as venereal diseases, are hereby declared to be contagious, infectious, communicable and dangerous to public health; and it shall be unlawful for anyone infected with these diseases or any of them to knowingly expose another person to the infection of such diseases.

History.

1921, ch. 200, §§ 1, 6, p. 406; I.C.A., § 38-501; am. 1945, ch. 52, § 1, p. 67; am. 1986, ch. 70, § 1, p. 195; am. 1988, ch. 45, § 1, p. 50; am. 1990, ch. 143, § 1, p. 322; am. 2012, ch. 311, § 1, p. 858.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 311, substituted "Syphilis, gonorrhea, human immunodeficiency virus (HIV), chlamydia and hepatitis B virus (HBV)" for "Syphilis, gonorrhea, acquired immunodeficiency syndrome (AIDS), AIDS related complexes (ARC), other manifestations of HIV (human immunodefi-

ciency virus) infections, chancroid and hepatitis B virus (HBV) infections" at the beginning of the section.

39-604. Confined and imprisoned persons — Examination, treatment, and quarantine — Victims of sexual offenses — Access to offenders' test results, testing for HIV, counseling and referral services. — (1) All persons who shall be confined or imprisoned in any state prison facility in this state shall be examined for on admission, and again upon the offender's request before release, and, if infected, treated for the diseases enumerated in section 39-601, Idaho Code, and this examination shall include a test for HIV antibodies or antigens. This examination is not intended to limit any usual or customary medical examinations that might be indicated during a person's imprisonment. Nothing herein contained shall be construed to interfere with the service of any sentence imposed by a court as a punishment for the commission of crime. Nothing contained in this section shall be construed to impose upon any state prison facility an obligation to continue to treat a person who tested positive for any disease enumerated in section 39-601, Idaho Code, or be financially responsible for such treatment after the person is released from the state prison facility.

(2) All persons who shall be confined in any county or city jail may be examined for and, if infected, treated for the venereal diseases enumerated in section 39-601, Idaho Code, if such persons have, in the judgment of public health authorities or the jailer, been exposed to a disease enumerated in section 39-601, Idaho Code.

(3) All persons who are charged with any sex offense in which body fluid, as defined in this chapter, has likely been transmitted to another shall be tested for the human immunodeficiency virus (HIV). At the request of the victim or parent, guardian or legal custodian of a minor victim, such test shall be administered not later than forty-eight (48) hours after the date on which the information or indictment is presented.

(4) All persons, including juveniles, who are charged with sex offenses, prostitution, any crime in which body fluid has likely been transmitted to another, or other charges as recommended by public health authorities shall be tested for the venereal diseases enumerated in section 39-601, Idaho Code, and for hepatitis C virus.

(5) All persons who are charged with any crime involving the use of injectable drugs shall be tested for the presence of HIV antibodies or antigens, for hepatitis C virus and for hepatitis B virus.

(6) If a person is tested as required in subsection (3), (4) or (5) of this section, the results of the test shall be revealed to the court. The court shall release the results of the test to the victim(s), or if the victim(s) is a minor, to the minor's parent, guardian or legal custodian. Whenever a prisoner tests positive for HIV antibodies or antigens, the victim(s) of said prisoner shall be entitled to counseling regarding HIV, HIV testing in accordance with applicable law, and referral for appropriate health care and support services. Said counseling, HIV testing and referral services shall be provided to the victim(s) by the district health departments at no charge to the

victim(s). Provided however, the requirement to provide referral services does not, in and of itself, obligate the district health departments to provide or otherwise pay for a victim's health care or support services. Any court, when releasing test results to a victim(s), or if the victim(s) is a minor, to the minor's parent, guardian, or legal custodian, shall explain or otherwise make the victim(s) or the victim's parent, guardian, or legal custodian, aware of the services to which the victim(s) is entitled as described herein.

(7) Responsibility for the examination, testing and treatment of persons confined in county or city jails shall be vested in the county or city that operates the jail. The county or city may contract with the district health departments or make other arrangements for the examination, testing and treatment services. The district health department or other provider may charge and collect for the costs of such examination and treatment, as follows:

(a) When the prisoner is a convicted felon awaiting transfer to the board of correction, or when the prisoner is a convicted felon being confined in jail pursuant to a contract with the board of correction, the board of correction shall reimburse such costs;

(b) When the prisoner is awaiting trial after an arrest by any state officer, the state agency employing such arresting officer shall reimburse such costs;

(c) When the prisoner is being held for any other authority or jurisdiction, including another state, the authority or jurisdiction responsible shall reimburse such costs unless otherwise provided for by contract.

History.

1921, ch. 200, § 4, p. 406; I.C.A., § 38-504; am. 1974, ch. 23, § 96, p. 633; am. 1988, ch. 45, § 3, p. 50; am. 1989, ch. 220, § 1, p. 536; am. 1990, ch. 310, § 1, p. 850; am. 1993, ch. 19, § 1, p. 71; am. 1994, ch. 408, § 1, p. 1278; am. 1999, ch. 323, § 1, p. 830; am. 2011, ch. 70, § 1, p. 148; am. 2012, ch. 311, § 2, p. 858; am. 2013, ch. 209, § 1, p. 498.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 311, substituted "or the jailer" for "and the jailer" near the end of subsection (2); deleted "drug related charges" following "sex offenses" near the beginning of subsection (4); and substituted "involving the use of injectable drugs" for "in which body fluid as defined in this chapter has likely been transmitted to another" in subsection (5).

The 2013 amendment, by ch. 209, in subsection (1), inserted "upon the offender's request" in the first sentence and added the last sentence.

Compiler's Notes.

The abbreviation and the letter "s" enclosed in parentheses so appeared in the law as enacted.

CHAPTER 11

BASIC DAY CARE LICENSE

SECTION.

39-1113. Denial, suspension or revocation of license. — (1) A

license may be denied, suspended or revoked by the department if the department finds that the applicant or licensee does not comply with the provisions of this chapter.

(2) No person who pleads guilty to, has been found guilty of or received a withheld judgment for any offense involving neglect or any physical injury to, or other abuse of a child including the following offenses or a similar provision in another jurisdiction, shall be eligible for a license under the provisions of this chapter:

(a) Felony injury of a child, section 18-1501, Idaho Code.

(b) The sexual abuse of a child under sixteen years of age, section 18-1506, Idaho Code.

(c) The ritualized abuse of a child under eighteen years of age, section 18-1506A, Idaho Code.

(d) The sexual exploitation of a child, section 18-1507, Idaho Code.

(e) Sexual abuse of a child under the age of sixteen years, section 18-1506, Idaho Code.

(f) Lewd conduct with a child under the age of sixteen years, section 18-1508, Idaho Code.

(g) The sale or barter of a child for adoption or other purposes, section 18-1511, Idaho Code.

(h) Murder in any degree, section 18-4001 or 18-4003, Idaho Code.

(i) Assault with intent to murder, section 18-4015, Idaho Code.

(j) Voluntary manslaughter, section 18-4006, Idaho Code.

(k) Rape, section 18-6101 or 18-6108, Idaho Code.

(*l*) Incest, section 18-6602, Idaho Code.

(m) Forcible sexual penetration by use of foreign object, section 18-6608, Idaho Code.

(n) Abuse, neglect or exploitation of a vulnerable adult, section 18-1505, Idaho Code.

(o) Aggravated, first degree, second degree and third degree arson, sections 18-801 through 18-805, Idaho Code.

(p) Crimes against nature, section 18-6605, Idaho Code.

(q) Kidnapping, sections 18-4501 through 18-4503, Idaho Code.

(r) Mayhem, section 18-5001, Idaho Code.

(s) Poisoning, section 18-4014 or 18-5501, Idaho Code.

(t) Robbery, section 18-6501, Idaho Code.

(u) Stalking in the first degree, section 18-7905, Idaho Code.

(v) Video voyeurism, section 18-6609, Idaho Code.

(w) Enticing of children, section 18-1509 or 18-1509A, Idaho Code.

(x) Inducing individuals under eighteen years of age into prostitution, section 18-5609, Idaho Code.

(y) Inducing person under eighteen years of age to patronize a prostitute, section 18-5611, Idaho Code.

(z) Any felony punishable by death or life imprisonment.

(aa) Attempt, section 18-306, Idaho Code, conspiracy, section 18-1701, Idaho Code, or accessory after the fact, section 18-205, Idaho Code, to commit any of the crimes designated in this subsection.

(3) No person who has pleaded guilty to, been found guilty of or received a withheld judgment for any offense involving neglect or any physical injury

to, or other abuse of a child, including the following offenses or a similar provision in another jurisdiction shall be eligible for a license for a period of five (5) years under the provisions of this chapter.

(a) Aggravated assault, section 18-905, Idaho Code.

(b) Aggravated battery, section 18-907(1), Idaho Code.

(c) Burglary, section 18-1401, Idaho Code.

(d) Felony theft, sections 18-2403 and 18-2407(1), Idaho Code.

(e) Forgery of a financial transaction card, section 18-3123, Idaho Code.

(f) Fraudulent use of a financial transaction card or number, section 18-3124, Idaho Code.

(g) Forgery or counterfeiting, chapter 36, title 18, Idaho Code.

(h) Misappropriation of personal identifying information, section 18-3126, Idaho Code.

(i) Insurance fraud, section 41-293, Idaho Code.

(j) Damage to or destruction of insured property, section 41-294, Idaho Code.

(k) Public assistance fraud, section 56-227, Idaho Code.

(*l*) Provider fraud, section 56-227A, Idaho Code.

(m) Attempted strangulation, section 18-923, Idaho Code.

(n) Attempt, section 18-306, Idaho Code, conspiracy, section 18-1701, Idaho Code, or accessory after the fact, section 18-205, Idaho Code, to commit any of the crimes designated in this subsection.

(o) Misdemeanor injury to a child, section 18-1501(2), Idaho Code.

(4) A daycare facility license may be denied, suspended or revoked by the department if the department finds that the daycare facility is not in compliance with the standards provided for in this chapter or criminal activity that threatens the health or safety of a child.

(5) A daycare facility license or privilege to operate a family daycare home shall be denied or revoked if a registered sex offender resides on the premises where daycare services are provided.

(6) The denial, suspension or revocation of a license under this chapter may be appealed to the district court of the county in which the affected daycare facility is located and the appeal shall be heard de novo in the district court.

History.

I.C., § 39-1113, as added by 1987, ch. 56, § 1, p. 92; am. 1990, ch. 271, § 1, p. 765; am. 1992, ch. 90, § 3, p. 279; am. 2009, ch. 295, § 13, p. 873; am. 2012, ch. 269, § 8, p. 751.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 269, deleted former paragraph 2(t), which read, "Possession of sexually exploitative material, section 18-1507A, Idaho Code" and redesignated the subsequent paragraphs accordingly.

CHAPTER 13

HOSPITAL LICENSES AND INSPECTION

39-1332. Annual statement of valuation of taxable property. — On or before the third Monday in July of each year the county auditor shall deliver to the secretary of each hospital district within the county a statement showing the aggregate valuation of all the taxable property in such district, and thereafter the district board shall levy the taxes herein provided for.

History.
1965, ch. 173, § 15, p. 340; am. 2012, ch. 38, § 2, p. 115.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 38, substituted "third Monday" for "first Monday" and "county auditor" for "county assessor."

Effective Dates.
Section 6 of S.L. 2012, ch. 38 declared an emergency and made this section retroactive to January 1, 2012. Approved March 6, 2012.

39-1392a. Definitions.

JUDICIAL DECISIONS

Peer Review.
Where an orthopedic surgeon's letters to the emergency room doctor were written to point out potential flaws he suspected might have occurred in a patient's care, and related to quality assurance and improvement, investigation activities, and professional review of the patient's treating doctors and hospital, the letters were privileged under the peer review statutes. Nightengale v. Timmel, 151 Idaho 347, 256 P.3d 755 (2011).

39-1392b. Records confidential and privileged.

JUDICIAL DECISIONS

ANALYSIS

Applicability.
Discovery.
Impeachment.

Applicability.
This section applies to a lawsuit brought against a hospital, claiming that the hospital acted in bad faith in refusing to renew a physician's privileges. There is no wording in this section that limits its scope to peer review records sought in a medical malpractice action. Verska v. St. Alphonsus Reg'l Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

Discovery.
District court did not err holding that this section precluded a doctor from discovering information related to the hospital's peer review of the doctor. To waive protection of peer review information under § 39-1392e(f), the hospital had to choose to disclose that information as part of its defense, before the doctor could access it. Montalbano v. St. Alphonsus

Reg'l Med. Ctr., 151 Idaho 837, 264 P.3d 944 (2011).

Impeachment.

An orthopedic surgeon's letters to an emergency room doctor regarding issues in the treatment of a patient were properly considered privileged by the peer review statutes. As such, they were not admissible for any purpose, including impeachment. Nightengale v. Timmel, 151 Idaho 347, 256 P.3d 755 (2011).

39-1392c. Immunity from civil liability.

JUDICIAL DECISIONS

Cited in: Montalbano v. St. Alphonsus Reg'l Med. Ctr., 151 Idaho 837, 264 P.3d 944 (2011).

39-1392e. Limited exceptions to privilege and confidentiality.

JUDICIAL DECISIONS

ANALYSIS

Applicability.
Information held privileged.

Applicability.

By bringing a lawsuit, a physician waives his or her right to assert the peer review privilege. The health care organization, and the members of its staff and committees who are defendants in the lawsuit, can then elect also to waive the privilege in order to defend the lawsuit. Verska v. St. Alphonsus Reg'l Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

Information Held Privileged.

District court did not err holding that § 39-1392b precluded a doctor from discovering information related to the hospital's peer review of the doctor. To waive protection of peer review information under this section, the hospital had to choose to disclose that information as part of its defense, before the doctor could access it. Montalbano v. St. Alphonsus Reg'l Med. Ctr., 151 Idaho 837, 264 P.3d 944 (2011).

39-1392g. Medical staff membership and privileges. — (1) Except as specifically provided in subsection (2) of this section, nothing in this section shall in any way change the authority of the governing body of any health care organization to make such rules, regulations, standards or qualifications for medical staff membership as it, in its discretion, may deem necessary or advisable, or to grant or refuse membership on a medical staff.

(2) An applicant for medical staff membership or privileges in a health care organization that has an organized medical staff, an applicant for reappointment to the medical staff of such health care organization, or a current member of the medical staff of such health care organization shall not be denied medical staff membership or privileges, nor shall membership or privileges be withdrawn, revoked, suspended or limited by such health care organization for the reason that:

(a) The applicant or current member of the medical staff holds an ownership interest in one (1) or more competing health care organizations;

(b) The applicant or current member of the medical staff is affiliated with one (1) or more competing health care organizations; or

(c) The applicant or current member of the medical staff is a competitor of one (1) or more members of the medical staff.

(3) Nothing in this section shall require a health care organization to grant privileges to an applicant for services that are subject to an exclusive contract or not offered in that facility.

(4) Nothing in this section shall be interpreted as changing the privilege, confidentiality, discoverability and admissibility of the information and records granted in section 39-1392b, Idaho Code.

History.
I.C., § 39-1392g, as added by 2012, ch. 167, § 1, p. 447.

39-1394. Patient care records — Retention — Authentication. — (1) Retention.

(a) Hospital records relating to the care and treatment of a patient may be preserved in microfilm, other photographically reproduced form or electronic medium. Such reproduced and preserved copies shall be deemed originals for purposes of section 9-420, Idaho Code.

(b) Clinical laboratory test records and reports may be destroyed five (5) years after the date of the test recorded or reported therein, pursuant to paragraph (d) of this subsection.

(c) X-ray films may be destroyed five (5) years after the date of exposure, or five (5) years after the patient reaches the age of majority, whichever is later, pursuant to paragraph (d) of this subsection, if there are in the hospital record written findings of a physician who has read such x-ray films.

(d) At any time after the retention periods specified in paragraphs (b) and (c) of this subsection, the hospital may, without thereby incurring liability, destroy such records, by burning, shredding or other effective method in keeping with the confidential nature of their contents, provided, however, that destruction of such records must be in the ordinary course of business and no record shall be destroyed on an individual basis.

(e) For purposes of this section, the term "hospital" shall include all facilities defined as hospitals in chapter 13, title 39, Idaho Code.

(2) Authentication.

(a) Hospital records relating to orders for the care and treatment of a patient or for the administration of any drug or pharmaceutical must be authenticated to ensure accuracy and patient safety.

(b) All orders must be authenticated by the author of the order or another practitioner who is responsible for the care of the patient and who is authorized to write orders by hospital policy in accordance with state law.

(c) When telephone or oral orders must be used, they must be:

(i) Accepted only by personnel authorized to do so by medical staff policies and procedures, consistent with federal and state law; and

(ii) Authenticated in a timely manner as stipulated by hospital policy.

(d) Authentication may occur either manually, with the practitioner's signature, or electronically by facsimile transmission signed by the practitioner or by means of a unique electronic code known only to the practitioner.

(e) Each hospital must have in place policies and mechanisms to assure timely authentication of all orders and to assure that only the author of an order or another practitioner who is responsible for the care of the patient and who is authorized to write orders by hospital policy in accordance with state law can authenticate the order.

History.
I.C., § 39-1394, as added by 1977, ch. 102, § 1, p. 217; am. 2001, ch. 67, § 1, p. 125; am. 2013, ch. 114, § 1, p. 275.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 114, added "or another practitioner who is responsible for the care of the patient and who is authorized to write orders by hospital policy in accordance with state law" in paragraph (2)(b); deleted "by the author of the order" following "Authenticated" in paragraph (2)(c)(ii); and substituted "or another practitioner who is responsible for the care of the patient and who is authorized to write orders by hospital policy in accordance with state law can authenticate the order" for "can authenticate his or her own entry" in subparagraph (2)(e).

CHAPTER 16

FOOD ESTABLISHMENT ACT

39-1604. License requirements for food establishments.

JUDICIAL DECISIONS

Cited in: Ketterling v. Burger King Corp., 152 Idaho 555, 272 P.3d 527 (2012).

CHAPTER 19

FIRE ESCAPES AND DOORS

39-1901. Fire escapes to be provided for certain structures. [Repealed.]

Repealed by S.L. 2013, ch. 104, § 1, effective July 1, 2013. See §§ 41-253 and 41-256.

History.
1903, ch. 148, § 1; reen. R.C., § 1550, compiled and reen. C.L., § 1550; C.S., § 2586; I.C.A., § 38-401; am. 1949, ch. 189, § 1, p. 404; am. 1957, ch. 103, § 1, p. 181; am. 1961, ch. 235, § 1, p. 381.

39-1902. How attached. [Repealed.]

Repealed by S.L. 2013, ch. 104, § 2, effective July 1, 2013. See §§ 41-253 and 41-256.

History.
1903, p. 148, § 2; reen. R.C. & C.L., § 1551; C.S., § 2587; I.C.A., § 38-1402; am. 1957, ch. 103, § 2, p. 181.

39-1904. Penalty for violating preceding sections. [Repealed.]

Repealed by S.L. 2013, ch. 104, § 3, effective July 1, 2013. See §§ 41-253 and 41-256.

History.
1903, p. 148, § 4; reen. R.C., § 1553; compiled and reen. C.L., § 1553; C.S., § 2589; I.C.A., § 28-1404.

39-1905. Doors on public buildings — Penalty. [Repealed.]

Repealed by S.L. 2013, ch. 104, § 4, effective July 1, 2013. See §§ 41-253 and 41-256.

History.
1911, ch. 97, §§ 1, 3, p. 341; compiled and reen. C.L., § 1553a; C.S., § 2590; I.C.A., § 38-1405.

CHAPTER 26

FIREWORKS

SECTION.
39-2611. Liability of parents.

39-2611. Liability of parents. — The parents or other persons having custody or control of a minor shall be liable for damage caused by the use of fireworks by the minor.

History.
I.C., § 39-2611, as added by 1997, ch. 246, § 2, p. 709; am. 2012, ch. 257, § 10, p. 709.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 257, deleted "or guardians" following "parents" in the section heading and deleted "guardians" following "parents" near the beginning of the section.

CHAPTER 30

RADIATION AND NUCLEAR MATERIAL

SECTION.
39-3029. Pacific states agreement on radioactive materials transportation management. [Repealed.]

39-3029. Pacific states agreement on radioactive materials transportation management. [Repealed.]

Repealed by S.L. 2012, ch. 255, § 2, effective April 3, 2012.

History.
I.C., § 39-3029, as added by 1987, ch. 57, § 1, p. 101.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 2012, ch. 255 provided: "Legislative Intent. It is the intent of the Legislature to repeal statutes involving inactive programs that require appointment of members of the Legislature. In addition to the repealed sections in this act, it is legislative intent that no legislative appointment be made for the purposes of the Idaho Commemorative Silver Medallions as provided in Section 67-1223, Idaho Code, until the State Treasurer issues a new series of medallions at which time such legislative appointments would be appropriate."

CHAPTER 31

REGIONAL BEHAVIORAL HEALTH SERVICES

SECTION.

39-3121. Declaration of policy. — It is the policy of this state to provide treatment services for its citizens living with mental illness and/or substance use disorder, acknowledging that these illnesses cause intense human suffering and severe social and economic loss to the state. Recognizing that there is insufficient funding to meet the many needs of Idahoans with behavioral health disorders, it is critical that the behavioral health system efficiently use existing and future resources and increase accountability for services and funding. Additionally, the system needs to distinguish between and accommodate for the difference in the treatment and support services for children, youth, adults and the transitions between them. Regional behavioral health services, providing early and appropriate diagnosis and treatment, have proven to be effective in reducing the adverse impact of these disorders and valuable in creating the possibility of recovery. Families play a key role in the successful treatment of behavioral health disorders and provision of services. Participation by consumers and their families in system governance is critical to ensure ongoing system improvements. Acknowledging the policy of the state to provide behavioral health services to all citizens in need of such care, it is the purpose of this chapter to delegate to the state behavioral health authority the responsibility and authority to establish and maintain regional behavioral health services in

order to extend appropriate mental health and substance use disorder treatment services to its citizens within all regions of the state.

History.
I.C., § 39-3121, as added by 2014, ch. 43, § 2, p. 107.

STATUTORY NOTES

Prior Laws.
Former § 39-3121, which comprised S.L. 1965, ch. 183, §§ 1 to 24, was repealed by S.L. 1969, ch. 202, § 19.

39-3122. Definitions. — (1) "Behavioral health" means an integrated system for evaluation and treatment of mental health and substance use disorders.

(2) "Region" means the administrative regions as defined by the department of health and welfare. Two (2) or more regions may consolidate for the purposes of this chapter. For the purposes of this chapter, regions will be consistent with judicial districts.

History.
I.C., § 39-3122, as added by 2014, ch. 43, § 3, p. 107.

STATUTORY NOTES

Prior Laws.
Former § 39-3122, which comprised S.L. 1965, ch. 183, §§ 1 to 24, was repealed by S.L. 1969, ch. 202, § 19.

39-3123. Designation of state mental health authority and state substance use disorder authority. — The Idaho department of health and welfare is hereby designated the state mental health authority and the state substance use disorder authority, hereinafter referred to as the state behavioral health authority. The state behavioral health authority is responsible for overseeing the state of Idaho's behavioral health system of care. The department shall fulfill this role through a collaborative process, taking into consideration and incorporating whenever reasonably possible the recommendations and evaluations of the state behavioral health planning council and the regional behavioral health boards in all statewide efforts to expand, improve, modify or transform the behavioral health service delivery system of the state. The provisions of this section shall not prohibit appropriations to executive agencies or the judiciary to fund community-based behavioral health treatment within their target population. The behavioral health authority shall report utilization, performance, outcome and other quality assurance data to the state behavioral health planning council and the regional behavioral health board on an annual basis.

History.
1969, ch. 202, § 2, p. 589; am. 1973, ch. 87, § 9, p. 137; am. 1974, ch. 23, § 147, p. 633; am. 2006, ch. 277, § 1, p. 849; am. and redesig. 2014, ch. 43, § 5, p. 107.

STATUTORY NOTES

Prior Laws.
Former § 39-3123, which comprised 1969, ch. 202, § 1, p. 589, was repealed by S.L. 2014, ch. 43, § 4, effective July 1, 2014. For present comparable provisions, see § 39-3121.

Cross References.
Department of health and welfare, § 56-1001 et seq.

Amendments.
The 2014 amendment, by ch. 43, redesignated the section from § 39-3124 and rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.
This section was formerly compiled as § 39-3124.

39-3124. Idaho behavioral health cooperative. — The behavioral health authority shall establish the Idaho behavioral health cooperative to advise it on issues related to the coordinated delivery of community-based behavioral health services. The membership shall include representatives from the Idaho state judiciary, the Idaho department of correction, the Idaho department of juvenile corrections, the office of drug policy, the Idaho association of counties, the state behavioral health planning council, an adult consumer of services, a family member of a youth consumer of services, the state department of education and the Idaho department of health and welfare, at a minimum, but may also include other members as deemed necessary by the behavioral health authority. The Idaho behavioral health cooperative shall meet quarterly, with additional meetings called at the request of the state behavioral health authority.

History.
I.C., § 39-3124, as added by 2014, ch. 43, § 6, p. 107.

STATUTORY NOTES

Compiler's Notes.
Former § 39-3124 was amended and redesignated as § 39-3123 by S.L. 2014, ch. 43, § 5, effective July 1, 2014.

39-3125. State behavioral health planning council. — (1) A state behavioral health planning council, hereinafter referred to as the planning council, shall be established to serve as an advocate for children and adults with behavioral health disorders; to advise the state behavioral health authority on issues of concern, on policies and on programs and to provide guidance to the state behavioral health authority in the development and implementation of the state behavioral health systems plan; to monitor and evaluate the allocation and adequacy of behavioral health services within the state on an ongoing basis; to monitor and evaluate the effectiveness of state laws that address behavioral health services; to ensure that individuals with behavioral health disorders have access to prevention, treatment and rehabilitation services; to serve as a vehicle for policy and program development; and to present to the governor, the judiciary and the legislature by June 30 of each year a report on the council's activities and an evaluation of the current effectiveness of the behavioral health services provided directly or indirectly by the state to adults and children. The planning council shall establish readiness and performance criteria for the

regional boards to accept and maintain responsibility for family support and recovery support services. The planning council shall evaluate regional board adherence to the readiness criteria and make a determination if the regional board has demonstrated readiness to accept responsibility over the family support and recovery support services for the region. The planning council shall report to the behavioral health authority if it determines a regional board is not fulfilling its responsibility to administer the family support and recovery support services for the region and recommend the regional behavioral health centers assume responsibility over the services until the board demonstrates it is prepared to regain the responsibility.

(2) The planning council shall be appointed by the governor and be comprised of no more than fifty percent (50%) state employees or providers of behavioral health services. Membership shall also reflect to the extent possible the collective demographic characteristics of Idaho's citizens. The planning council membership shall include representation from consumers, families of adults with serious mental illness or substance use disorders; behavioral health advocates; principal state agencies and the judicial branch with respect to behavioral health, education, vocational rehabilitation, adult correction, juvenile justice and law enforcement, title XIX of the social security act and other entitlement programs; public and private entities concerned with the need, planning, operation, funding and use of mental health services or substance use disorders, and related support services; and the regional behavioral health board in each department of health and welfare region as provided for in section 39-3134, Idaho Code. The planning council may include members of the legislature.

(3) The planning council members will serve a term of two (2) years or at the pleasure of the governor, provided however, that of the members first appointed, one-half (1/2) of the appointments shall be for a term of one (1) year and one-half (1/2) of the appointments shall be for a term of two (2) years. The governor will appoint a chair and a vice-chair whose terms will be two (2) years.

(4) The council may establish subcommittees at its discretion.

History.
I.C., § 39-3125, as added by 2006, ch. 277, § 3, p. 849; am. 2014, ch. 43, § 7, p. 107.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 43, rewrote the section to the extent that a detailed comparison is impracticable.

39-3126. Designation of regional behavioral health centers. — Recognizing both the need of every citizen to receive the best behavioral health services that the state is able to provide within budgetary confines and the disproportionate ability of counties to finance behavioral health services, the state behavioral health authority shall designate regions and be responsible for establishing regional behavioral health centers for all areas of the state. In the establishment of regions, primary consideration will be given to natural population groupings and service areas, the regions

previously designated for the establishment of other health services, the behavioral health needs of the people within the proposed regions, and the appropriate maximal use of available funding.

History.
1969, ch. 202, § 3, p. 589; am. and redesig. 2006, ch. 277, § 2, p. 849; am. 2014, ch. 43, § 8, p. 107.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 43, rewrote the section heading; substituted "behavioral health" for "mental health" throughout the section; and substituted "need of every citizen to receive" for "right of every citizen to" in the first sentence.

39-3127. Coordination of services between regions and state. — The director of the department of health and welfare shall coordinate services between the regional behavioral health centers, regional behavioral health boards and the state psychiatric hospitals.

History.
I.C., § 39-3127, as added by 2014, ch. 43, § 9, p. 107.

STATUTORY NOTES

Compiler's Notes.
Former § 39-3127 was amended and redesignated as § 39-3130 by S.L. 2014, ch. 43, § 13, effective July 1, 2014.

39-3128. Facilities for behavioral health centers. — The state behavioral health authority may contract for the lease of facilities appropriate for the establishment of behavioral health centers. In order to encourage the development of comprehensive and integrated health care and whenever feasible and consistent with behavioral health treatment, these facilities shall be in or near facilities within the region housing other health services.

History.
I.C., § 39-3128, as added by 2014, ch. 43, § 10, p. 107.

STATUTORY NOTES

Compiler's Notes.
Former § 39-3128 was amended and redesignated as § 39-3131 by S.L. 2014, ch. 43, § 15, effective July 1, 2014.

39-3129. Division administrator for regional behavioral health centers — Duties. — The director of the department of health and welfare shall appoint a division administrator to manage the regional behavioral health centers and shall supervise its program; shall prescribe uniform standards of treatment, services and care provided by the regional behavioral health centers and regional behavioral health boards; shall set the professional qualifications for staff positions; and make such other policy as

are necessary and proper to carry out the purposes and intent of this chapter.

History.
I.C., § 39-3129, as added by 2014, ch. 43, § 12, p. 107.

STATUTORY NOTES

Prior Laws.
Former § 39-3129, which comprised 1969, ch. 202, § 7, p. 589; am. 2004, ch. 354, § 1, p. 1058; am. 2006, ch. 277, § 7, p. 849, was repealed by S.L. 2014, ch. 43, § 11, effective July 1, 2014.

39-3130. Reciprocal agreements between states to share services. — In such regions where natural population groupings overlap state boundaries, an interstate regional behavioral health service may be established jointly with a neighboring state or states. In such instances, the state behavioral health authority may enter into reciprocal agreements with these states to either share the expenses of the service in proportion to the population served; to allow neighboring states to buy services from Idaho; or to allow Idaho to purchase services that are otherwise not available to its citizens.

History.
1969, ch. 202, § 4, p. 589; am. and redesig. 2006, ch. 277, § 4, p. 849; am. and redesig. 2014, ch. 43, § 13, p. 107.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 43, redesignated the section from § 39-3127, substituted "an interstate regional behavioral health" for "a regional comprehensive mental health", and substituted "behavioral health authority" for "mental health authority."

Compiler's Notes.
This section was formerly compiled as § 39-2127.

Former § 39-3130 was amended and redesignated as § 39-3134 by S.L. 2014, ch. 43, § 20, effective July 1, 2014.

39-3131. Behavioral health Services to be offered. — The regional behavioral health center shall provide or arrange for the delivery of services that, combined with community family support and recovery support services provided through the regional behavioral health boards, medicaid and services delivered through a private provider network, will lead to the establishment of a comprehensive regional behavioral health system of care that incorporates patient choice and family involvement to the extent reasonably practicable and medically and professionally appropriate. The regional behavioral health center shall provide or arrange for the delivery of the following services:

(1) Treatment services for individuals who do not have other benefits available to meet their behavioral health needs as resources allow including, but not limited to, psychiatric services, medication management, rehabilitative and community-based services, outpatient and intensive outpatient services, assertive community treatment, case management and residential care;

(2) Community family support and recovery support services as defined

in section 39-3135(7), Idaho Code, until the regional behavioral health board can meet the initial readiness criteria and voluntarily accepts responsibility for these services or if the regional behavioral health board fails to sustain criteria to maintain responsibility for these services;

(3) Evaluation and intervention for individuals experiencing a behavioral health emergency;

(4) Hospital precare and postcare services, in cooperation with state and community psychiatric hospitals, for individuals who have been committed to the custody of the director of health and welfare pursuant to sections 18-212 and 66-329, Idaho Code, or who are under an involuntary treatment order pursuant to chapter 24, title 16, Idaho Code;

(5) Evaluation and securing mental health treatment services as ordered by a court for individuals pursuant to section 19-2524, 20-511A or 20-519B, Idaho Code; and

(6) Evaluation and securing treatment services for individuals who are accepted into mental health courts.

History.
1969, ch. 202, § 5, p. 589; am. and redesig. 2006, ch. 277, § 5, p. 849; am. and redesig. 2014, ch. 43, § 15, p. 107.

STATUTORY NOTES

Prior Laws.
Former § 39-3131, which comprised 1969, ch. 202, § 9, p. 589; am. 1980, ch. 247, § 38, p. 582; am. 2004, ch. 354, § 3, p. 1058, was repealed by S.L. 2014, ch. 43, § 14, effective July 1, 2014.

Amendments.
The 2014 amendment, by ch. 43, redesignated the section from § 39-3128 and rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.
This section was formerly compiled as § 39-3128.

39-3132. Regional behavioral health boards — Establishment. — There is hereby created and established in each region a regional behavioral health board. It is legislative intent that the regional behavioral health boards operate and be recognized not as a state agency or department, but as governmental entities whose creation has been authorized by the state, much in the manner as other single purpose districts. However, the regional behavioral health boards shall have no authority to levy taxes. For the purposes of section 59-1302(15), Idaho Code, the seven (7) regional behavioral health boards created pursuant to this chapter shall be deemed governmental entities. The regional behavioral health boards are authorized to provide the community family support and recovery support services identified in section 39-3135(7), Idaho Code. The services identified in section 39-3135(7), Idaho Code, shall not be construed to restrict the services of the regional behavioral health board solely to these categories.

History.
I.C., § 39-3132, as added by 2014, ch. 43, § 16, p. 107.

STATUTORY NOTES

Compiler's Notes.
Former § 39-3132 was amended and redesignated as § 39-3135 by S.L. 2014, ch. 43, § 23, effective July 1, 2014

39-3133. Executive committee of the regional behavioral health boards. — Each regional behavioral health board shall annually elect from within its membership an executive committee of five (5) members empowered to make fiscal, legal and business decisions on behalf of the full board or join with another governmental entity that can fulfill the same management infrastructure function. If the regional behavioral health board elects to create its own internal executive committee, the membership shall be representative of the regional behavioral health board membership and must, at a minimum, include one (1) mental health consumer or advocate and one (1) substance use disorder consumer or advocate. The executive committees or the partner public entity shall have the power and duty, on behalf of the regional behavioral health boards, to:

(1) Establish a fiscal control policy as required by the state controller;

(2) Enter into contracts and grants with other governmental and private agencies, and this chapter hereby authorizes such other agencies to enter into contracts with the regional behavioral health boards, as deemed necessary to fulfill the duties imposed upon the board to promote and sustain the ability of individuals with behavioral health disorders to live in the community and avoid institutionalization;

(3) Develop and maintain bylaws as necessary to establish the process and structure of the board; and

(4) Employ and fix the compensation, subject to the provisions of chapter 53, title 67, Idaho Code, of such personnel as may be necessary to carry out the duties of the regional behavioral health boards.

All meetings of the executive committee shall be held in accordance with the open meeting law as provided for in chapter 23, title 67, Idaho Code.

History.
I.C., § 39-3133, as added by 2014, ch. 43, § 18, p. 107.

STATUTORY NOTES

Prior Laws.
Former § 39-3133, which comprised 1969, ch. 202, § 11, p. 589; am. 1974, ch. 23, § 148, p. 633; am. 2006, ch. 277, § 9, p. 849, was repealed by S.L. 2014, ch. 43, § 17, effective July 1, 2014.

39-3134. Regional behavioral health board — Members — Terms — Appointment. — A regional behavioral health board for each region shall consist of twenty-two (22) members and shall be appointed as provided herein. All meetings of the regional behavioral health board shall be held in accordance with the open meeting law as provided for in chapter 23, title 67, Idaho Code. Members shall be comprised of the following: three (3) county commissioners or their designee; two (2) department of health and welfare employees who represent the behavioral health system within the region; one (1) parent of a child with a serious emotional disturbance; one (1) parent

of a child with a substance use disorder; a law enforcement officer; one (1) adult mental health services consumer representative; one (1) mental health advocate; one (1) substance use disorder advocate; one (1) adult substance use disorder services consumer representative; one (1) family member of an adult mental health services consumer; one (1) family member of an adult substance use disorder services consumer; a private provider of mental health services within the region; a private provider of substance use disorder services within the region; a representative of the elementary or secondary public education system within the region; a representative of the juvenile justice system within the region; a representative of the adult correction system within the region; a representative of the judiciary appointed by the administrative district judge; a physician or other licensed health practitioner from within the region; and a representative of a hospital within the region. The consumer, parent and family representatives shall be selected from nominations submitted by behavioral health consumer and advocacy organizations. The board may have nonvoting members as necessary to fulfill its roles and responsibilities. The board shall meet at least twice each year, and shall annually elect a chairperson and other officers as it deems appropriate.

On the effective date of this chapter, the appointing authority in each region shall be a committee composed of the chairperson of the board of county commissioners of each of the counties within the region, the current chair of the regional mental health board and the current chair of the regional advisory committee and, after the initial appointment of members to the regional behavioral health board, the current chair of the regional behavioral health board and one (1) representative of the department of health and welfare. The committee shall meet annually or as needed to fill vacancies on the board.

The appointing authority in each region shall determine if members of the regional mental health board and the regional advisory committee who are serving on the effective date of this chapter may continue to serve until the end of the current term of their appointment or they may end all current appointments and create the board membership based upon the requirements of this section. If the appointing authority decides to allow current members of the board to serve out their current terms, appointments made after the effective date of this chapter shall be made in a manner to achieve the representation provided in this section as soon as reasonably practical.

The term of each member of the board shall be for four (4) years; provided however, that of the members first appointed, one-third (1/3) from each region shall be appointed for a term of two (2) years; one-third (1/3) for a term of three (3) years; and one-third (1/3) for a term of four (4) years. After the membership representation required in this section is achieved, vacancies shall be filled for the unexpired term in the same manner as original appointments. Board members shall be compensated as provided for in section 59-509(b), Idaho Code, and such compensation shall be paid from the operating budget of the regional behavioral health board as resources allow.

History.
1969, ch. 202, § 8, p. 589; am. 2004, ch. 354, § 2, p. 1058; am. 2009, ch. 122, § 1, p. 386; am. and redesig. 2014, ch. 43, § 20, p. 107.

STATUTORY NOTES

Prior Laws.
Former § 39-3134, which comprised 1969, ch. 202, § 12, p. 589; am. 1974, ch. 23, § 149, p. 633, was repealed by S.L. 2014, ch. 43, § 19, effective July 1, 2014.

Amendments.
The 2014 amendment, by ch. 43, redesignated the section from § 39-3130 and rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.
This section was formerly compiled as § 39-3130

The phrase "the effective date of this chapter" at the beginning of the second paragraph refers to the effective date of S.L. 2014, Chapter 43, which was effective July 1, 2014.

39-3134A. Cooperative service plan component. [Repealed.]

Repealed by S.L. 2014, ch. 43, § 21, effective July 1, 2014.

History.
I.C., § 39-3134A, as added by 2004, ch. 354, § 5, p. 1058; am. 2006, ch. 277, § 10, p. 849; am. 2007, ch. 218, § 1, p. 654.

39-3135. Powers and duties. — The regional behavioral health board:

(1) Shall advise the state behavioral health authority and the state planning council on local behavioral health needs of adults and children within the region;

(2) Shall advise the state behavioral health authority and the planning council of the progress, problems and proposed projects of the regional service;

(3) Shall promote improvements in the delivery of behavioral health services and coordinate and exchange information regarding behavioral health programs in the region;

(4) Shall identify gaps in available services including, but not limited to, services listed in sections 16-2402(3) and 39-3131, Idaho Code, and recommend service enhancements that address identified needs for consideration to the state behavioral health authority;

(5) Shall assist the planning council with planning for service system improvement. The planning council shall incorporate the recommendation to the regional behavioral health boards into the annual report provided to the governor by June 30 of each year. This report shall also be provided to the legislature;

(6) May develop, or obtain proposals for, a petition for regional services for consideration by the state behavioral health authority;

(7) May accept the responsibility to develop and provide community family support and recovery support services in their region. The board must demonstrate readiness to accept this responsibility and shall not be held liable for services in which there is no funding to provide. The readiness criteria for accepting this responsibility shall be established by the planning council. The planning council shall also determine when a regional behavioral health board has complied with the readiness criteria. Community family support and recovery support services include, but are not limited to:

(a) Community consultation and education;

(b) Housing to promote and sustain the ability of individuals with behavioral health disorders to live in the community and avoid institutionalization;

(c) Employment opportunities to promote and sustain the ability of individuals with behavioral health disorders to live in the community and avoid institutionalization;

(d) Evidence-based prevention activities that reduce the burden associated with mental illness and substance use disorders; and

(e) Supportive services to promote and sustain the ability of individuals with behavioral health disorders to live in the community and avoid institutionalization including, but not limited to, peer run drop-in centers, support groups, transportation and family support services;

(8) If a regional board, after accepting the responsibility for a recovery support service, fails to successfully implement and maintain access to the service, the behavioral health authority shall, after working with the board to resolve the issue, take over responsibility for the services until the board can demonstrate its ability to regain organization and provision of the services;

(9) Shall annually provide a report to the planning council, the regional behavioral health centers and the state behavioral health authority of its progress toward building a comprehensive community family support and recovery support system that shall include performance and outcome data as defined and in a format established by the planning council; and

(10) The regional board may establish subcommittees as it determines necessary and shall, at a minimum, establish and maintain a children's mental health subcommittee.

History.
1969, ch. 202, § 10, p. 589; am. 2004, ch. 354, § 4, p. 1058; am. 2006, ch. 277, § 8, p. 849; am. 2009, ch. 122, § 2, p. 386; am. and redesig. 2014, ch. 43, § 23, p. 107.

STATUTORY NOTES

Prior Laws.
Former § 39-3135, which comprised 1969, ch. 202, § 13, p. 589, was repealed by S.L. 2014, ch. 43, § 22, effective July 1, 2014.

Amendments.
The 2014 amendment, by ch. 43, redesignated the section from § 39-3132 and rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.
This section was formerly compiled as § 39-3132.

39-3136. Funds. — The financial support for the regional behavioral health centers shall be furnished by state appropriations and by whatever federal funds are available in an identifiable section within the behavioral health program budgets. Behavioral health services that are financed or contracted by local or federal sources may be incorporated into the regional behavioral health centers subject to the approval of the state behavioral health authority.

History.
1969, ch. 202, § 14, p. 589; am. 2014, ch. 43, § 24, p. 107.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 43, substituted "behavioral health" for "mental health" throughout the section and "health centers" for "health services" in the first sentence and near the end of the last sentence.

39-3137. Services to be nondiscriminatory — Fees. — No regional behavioral health center or regional behavioral health board shall refuse service to any person because of race, color or religion or because of ability or inability to pay. Persons receiving services will be charged fees in keeping with a fee schedule prepared by the state behavioral health authority. Fees collected by the regional behavioral health center shall become part of its budget and utilized at the direction of the behavioral health authority. Fees collected by the regional behavioral board shall become part of its budget and utilized at the direction of the executive board or governing entity.

History.
1969, ch. 202, § 15, p. 589; am. 2014, ch. 43, § 25, p. 107.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 43, substituted "behavioral health center or regional behavioral health board" for "mental health service" in the first sentence; substituted "behavioral health" for "mental health" in the second sentence; rewrote the third sentence; and added the last sentence.

39-3138. Existing state-county contracts for services. — No section of this chapter shall invalidate, or prohibit the continuance of, existing state-county contracts for the delivery of behavioral health services within the participating counties.

History.
1969, ch. 202, § 16, p. 589; am. 2014, ch. 43, § 26, p. 107.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 43, substituted "this chapter" for "this act" and "behavioral health" for "mental health".

39-3139. Title of chapter. — This chapter may be cited as the "Regional Behavioral Health Services Act."

History.
1969, ch. 202, § 17, p. 589; am. 2014, ch. 43, § 27, p. 107.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 43, substituted "chapter" for "act" in the section heading and the section; and substituted "Behavioral Health" for "Mental Health" in this section.

39-3140. Department rules. — The director is authorized to promulgate rules necessary to implement the provisions of this chapter that are consistent with its provision.

History.
I.C., § 39-3140, as added by 2014, ch. 43, § 28, p. 107.

CHAPTER 34

REVISED UNIFORM ANATOMICAL GIFT ACT

SECTION.

39-3413. Search and notification. — (1) For purposes of this section, "first responder" means a law enforcement officer, firefighter, emergency medical services provider, coroner or other emergency rescuer.

(2) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(a) A first responder finding the individual; and

(b) If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

(3) For all individuals identified as a donor, following the determination that an individual is deceased by a person qualified to do so, such person shall, as soon as reasonably possible, notify the Idaho state communication center [Idaho emergency medical services communications center] of the location where the deceased will be or has been transported to and include the deceased individual's name and date of birth if known. The Idaho state communication center [Idaho emergency medical services communications center] shall, as soon as reasonably possible, notify the appropriate organ procurement organization, tissue bank or eye bank.

(4) If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection (2) (a) of this section and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(5) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section.

History.
I.C., § 39-3413, as added by 2007, ch. 30, § 2, p. 61; am. 2013, ch. 247, § 1, p. 597.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 247, rewrote the section, adding subsections (1) and (3).

Compiler's Notes.
The bracketed insertions in subsection (3) were added by the compiler to correct the

name of the referenced agency, see *http://healthandwelfare.idaho.gov/Medical/EmergencyMedicalServices2/StateCommunications2/tabid/1605/Default.aspx*.

CHAPTER 36
WATER QUALITY

SECTION.

39-3602. Definitions. — Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

(1) "Applicable water quality standard" means those water quality standards identified in the rules of the department.

(2) "Attainable" beneficial uses means uses that can be achieved by the implementation of required effluent limits for point sources and cost-effective and reasonable best management practices for nonpoint sources.

(3) "Best management practice" means practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.

(4) "Board" means the board of environmental quality.

(5) "Consult" or "consultation" with basin advisory groups and watershed advisory groups, when not otherwise defined in this chapter, means that the director shall:

(a) Upon request, provide the groups with all available information in the possession of the department concerning the subject of the consultation;

(b) Utilize the knowledge, expertise, experience and information of the groups in making the determination that is the subject of the consultation; and

(c) Consider the groups' recommendations regarding the determination that is the subject of the consultation.

(6) "Control strategies" means cost-effective actions in TMDL implementation plans to control the discharge of pollutants that can reasonably be taken to improve the water quality within the physical, operational, economic and other constraints that affect individual enterprises and communities.

(7) "Degradation" or "lower water quality" means, for purposes of antidegradation review, a change in a pollutant that is adverse to desig-

nated or existing uses, as calculated for a new point source, and based upon monitoring or calculated information for an existing point source increasing its discharge. Such degradation shall be calculated or measured after appropriate mixing of the discharge and receiving water body.

(8) "Department" means the department of environmental quality.

(9) "Designated agency" means the department of lands for timber harvest activities, for oil and gas exploration and development and for mining activities; the soil and water conservation commission for grazing activities and for agricultural activities; the transportation department for public road construction; the department of agriculture for aquaculture; and the department of environmental quality for all other activities.

(10) "Designated use or designated beneficial use" means those uses assigned to waters as identified in the rules of the department whether or not the uses are being attained. The department may adopt subcategories of a use.

(11) "Director" means the director of the department of environmental quality, or his or her designee.

(12) "Discharge" means any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. For the purposes of this chapter, discharge shall not include surface water runoff from nonpoint sources or natural soil disturbing events.

(13) "Existing use" means those surface water uses actually attained on or after November 28, 1975, whether or not they are designated uses. Existing uses may form the basis for subcategories of designated uses.

(14) "Full protection, full support, or full maintenance of designated beneficial uses of water" means compliance with those levels of water quality criteria listed in the appropriate rules of the department, or where there is no applicable numerical criteria, compliance with the reference streams or conditions approved by the director in consultation with the appropriate basin advisory group.

(15) "General permit" means an NPDES permit issued by the U.S. environmental protection agency authorizing a category of discharges under the federal clean water act or a nationwide or regional permit issued by the U.S. army corps of engineers under the federal clean water act.

(16) "Integrated report" means the consolidated listing and reporting of the state's water quality status pursuant to the federal clean water act.

(17) "National pollutant discharge elimination system (NPDES)" means the point source permitting program established pursuant to section 402 of the federal clean water act.

(18) "New nonpoint source activity" means a new nonpoint source activity or a substantially modified existing nonpoint source activity on or adversely affecting an outstanding resource water which includes, but is not limited to, new silvicultural activities, new mining activities and substantial modifications to an existing mining permit or approved plan, new recreational activities and substantial modifications to existing recreational activities, new residential or commercial development that includes soil disturbing activities, new grazing activities and substantial modifications to existing grazing activities, except that reissuance of existing grazing per-

mits, or grazing activities and practices authorized under an existing permit, is not considered a new activity. It does not include naturally occurring events such as floods, landslides, and wildfire including prescribed natural fire.

(19) "Nonpoint source activities" includes grazing, crop production, silviculture, log storage or rafting, construction, mining, recreation, septic systems, runoff from storms and other weather related events and other activities not subject to regulation under the federal national pollutant discharge elimination system. Nonpoint source activities on waters designated as outstanding resource waters do not include issuance of water rights permits or licenses, allocation of water rights, operation of diversions, or impoundments.

(20) "Nonpoint source runoff" means water which may carry pollutants from nonpoint source activities into the waters of the state.

(21) "Outstanding resource water" means a high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been so designated by the legislature. It constitutes an outstanding national or state resource that requires protection from point source and nonpoint source activities that may lower water quality.

(22) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties.

(23) "Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be, discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition.

(24) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged or released to water in excessive quantities cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities.

(25) "Reference stream or condition" means one (1) of the following:

(a) The minimum biological, physical and chemical conditions necessary to fully support the designated beneficial uses; or

(b) A water body representing natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin; or

(c) A water body representing minimum conditions necessary to fully support the designated beneficial uses.

In highly mineralized areas or in the absence of such reference streams or water bodies, the director, in consultation with the basin advisory group and the technical advisers to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported.

(26) "Short-term or temporary activity" means an activity which is limited in scope and is expected to have only minimal impact on water quality as determined by the director. Short-term or temporary activities include, but are not limited to, maintenance of existing structures, limited road and trail reconstruction, soil stabilization measures, and habitat enhancement structures.

(27) "Silviculture" means those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber.

(28) "Soil and water conservation commission" means an agency of state government as created in section 22-2718, Idaho Code.

(29) "Soil conservation district" means an entity of state government as defined in section 22-2717, Idaho Code.

(30) "State" means the state of Idaho.

(31) "State water quality management plan" means the state management plan developed and updated by the department in accordance with sections 205, 208, and 303 of the federal clean water act.

(32) "Subbasin assessment" means a document that describes a watershed or watersheds for which a total maximum daily load is proposed, the water quality concerns, the status and attainability of designated uses and water quality criteria for individual water bodies, the nature and location of pollutant sources, past and ongoing pollutant control activities, and such other information that the director with the advice of the local watershed advisory group determines is pertinent to the analysis of water quality and the development and implementation of a total maximum daily load.

(33) "Total maximum daily load (TMDL)" means a plan for a water body not fully supporting designated beneficial uses and includes the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, and natural background levels of the pollutant impacting the water body. Pollutant allocations established through TMDLs shall be at a level necessary to implement the applicable water quality standards for the identified pollutants with seasonal variations and a margin of safety to account for uncertainty concerning the relationship between the pollutant loading and water quality standards.

(34) "Waters or water body" means the navigable waters of the United States as defined in the federal clean water act. For the purposes of this chapter, water bodies shall not include municipal or industrial wastewater treatment or storage structures or private reservoirs, the operation of which has no effect on waters.

(35) "Water pollution" is such alteration of the thermal, chemical, biological or radioactive properties of any waters of the state, or such discharge or release of any contaminant into the waters of the state as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other legitimate uses or to livestock, wild animals, birds, fish or other aquatic life.

(36) "Water quality standards" are the designated uses of a water body and water quality criteria necessary to support those uses, and an antidegradation policy.

(37) "Watersheds" means the land area from which water flows into a stream or other body of water which drains the area. For the purposes of this chapter, the area of watersheds shall be recommended by the basin advisory group described in section 39-3613, Idaho Code.

History.

I.C., § 39-3602, as added by 1995, ch. 352, § 1, p. 1165; am. 1997, ch. 279, § 1, p. 828; am. 2001, ch. 103, § 31, p. 253; am. 2005, ch. 334, § 1, p. 1045; am. 2010, ch. 279, § 25, p. 719; am. 2011, ch. 116, § 2, p. 320; am. 2013, ch. 348, § 1, p. 941.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 348, added subsection (5) and renumbered the subsequent subsections accordingly.

Federal References.

The federal clean water act, referred to in this section, is compiled as 33 USCS § 1251 et seq.

Section 402 of the federal clean water act, referred to in subsection (17), is compiled as 33 U.S.C.S., § 1342.

Sections 205, 208 and 303 of the federal clean water act, referred to in subsection (31), are compiled as 33 U.S.C.S., §§ 1285, 1288 and 1313, respectively.

39-3603. Antidegradation policy and implementation. — (1) Policy.

(a) Maintenance of existing uses for all waters — Tier I protection. The existing instream beneficial uses of each water body and the level of water quality necessary to protect those uses shall be maintained and protected.

(b) High quality waters — Tier II protection. Where the quality of waters exceeds levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water, that quality shall be maintained unless the department finds, after full satisfaction of the intergovernmental coordination and public participation provisions of this chapter, and the department's planning processes, along with appropriate planning processes of other agencies, that lowering water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such reductions in water quality, the department shall assure water quality adequate to protect existing uses fully.

(c) Outstanding resource waters — Tier III protection. Where an outstanding resource water has been designated by the legislature that water quality shall be maintained and protected from the impacts of point and nonpoint source activities.

(2) Implementation.

(a) General permits. For general permits issued on or after July 1, 2011, the department will conduct an antidegradation review, including any required Tier II analysis, at the time at which general permits are certified. For general permits that the department determines adequately address antidegradation, review of individual applications for coverage will not be required unless it is required by the general permit. For general permits that the department determines do not adequately address antidegradation, the department may conclude that other conditions, such as the submittal of additional information or individual certification at the time an application is submitted for coverage under a general permit, may be necessary in the general permit to provide reasonable assurance of compliance with the antidegradation policy. If supported by the permit record, the department may also presume that discharges authorized under a general permit are insignificant or that the pollution controls required in the general permit are the least degrading alternative as specified in the department's rules.

(b) Identification of Tier II waters. The department will utilize a water body by water body approach in determining where Tier II protection is appropriate in addition to Tier I protection. This approach shall be based on an assessment of the chemical, physical, biological and other information regarding the water body. The most recent federally approved integrated report and supporting data will be used to determine the appropriate level of protection as follows:

(i) Water bodies identified in the integrated report as fully supporting assessed uses will be provided Tier II protection.

(ii) Water bodies identified in the integrated report as not assessed will be provided an appropriate level of protection on a case-by-case basis using information available at the time of a proposal for a new or reissued permit or license.

(iii) Water bodies identified in the integrated report as not fully supporting assessed uses will receive Tier I protection for the impaired aquatic life or recreational use, except as follows:

1. For aquatic life uses identified as impaired for dissolved oxygen, pH or temperature, if biological or aquatic habitat parameters show a healthy, balanced biological community is present, as described in the water body assessment guidance published by the department, then the water body shall receive Tier II protection for aquatic life.

2. For recreational uses, if water quality data show compliance with those levels of water quality criteria listed in the department's rules, then the water body shall receive Tier II protection for recreational uses.

(iv) Special resource waters listed in the department's rules shall be evaluated in the same fashion as all other waters.

(c) Tier II analysis for insignificant degradation. If the department determines an activity or discharge will cause degradation, then the department shall determine whether the degradation is insignificant.

(i) A cumulative decrease in assimilative capacity of more than ten percent (10%), from conditions as of July 1, 2011, shall constitute

significant degradation. If the cumulative decrease in assimilative capacity from conditions as of July 1, 2011, is equal to or less than ten percent (10%), then, taking into consideration the size and character of the activity or discharge and the magnitude of its effect on the receiving stream, the department may determine that the degradation is insignificant.

(ii) The department may request additional information from the applicant as needed to determine the significance of the degradation.

(iii) If degradation is determined to be insignificant, then no further Tier II analysis for other source controls, alternatives analysis or socioeconomic justification is required.

History.
I.C., § 39-3603, as added by 1995, ch. 352, § 1, p. 1165; am. 2011, ch. 116, § 3, p. 320; am. 2014, ch. 60, § 1, p. 142.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 60, rewrote paragraph (2)(c), which formerly read: "(c) Tier II analysis for insignificant activity or discharge. The department shall consider the size and character of an activity or discharge or the magnitude of its effect on the receiving stream and shall determine whether it is insignificant. If an activity or discharge is determined to be insignificant, then no further Tier II analysis for other source controls, alternatives analysis or socioeconomic justification is required. (i) The department shall determine insignificance when the proposed change in an activity or discharge, from conditions as of July 1, 2011, will not cumulatively decrease assimilative capacity by more than ten percent (10%). (ii) The department may request additional information from the applicant in making a determination whether a proposed change in an activity or discharge is insignificant."

Effective Dates.
Section 2 of S.L. 2014, ch. 60 declared an emergency. Approved March 11, 2014.

39-3604. Designation of instream beneficial uses. — (1) The director shall designate the beneficial uses each surface water body can reasonably be expected to attain.

(2) Designated beneficial uses shall reflect existing uses. The director shall designate beneficial uses without regard to whether the uses are currently being attained or whether the uses are fully supported at the time of designation. In designating beneficial uses, the director shall consider:

(a) The existing uses of the water body;

(b) The physical, geological, hydrological, atmospheric, chemical and biological measures that affect the water body;

(c) The beneficial use attainability measures identified in section 39-3607, Idaho Code; and

(d) The economic impact of the designation and the economic costs required to fully support the beneficial uses.

(3) When designating beneficial uses for a water body, the director shall consult with the basin advisory group and the watershed advisory group with the responsibilities described in this chapter for the water body. After consultation, the director shall identify the designated beneficial uses of each water body in the rules of the department pursuant to the rulemaking and public participation provisions of chapter 52, title 67, Idaho Code.

(4) Persons who either conduct nonpoint activities or who conduct oper-

ations on waters described in section 39-3609, Idaho Code, pursuant to a national pollution discharge elimination system permit, shall not be required to meet water quality criteria other than those necessary for the full support of a water body's existing and designated beneficial uses, except as provided in section 39-3611, Idaho Code.

History.
I.C., § 39-3604, as added by 1995, ch. 352, § 1, p. 1165; am. 1997, ch. 279, § 2, p. 828; am. 2013, ch. 348, § 2, p. 941.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 348, rewrote the section to the extent that a detailed comparison is impracticable.

39-3605. Identification of reference streams or conditions. — The director shall, in consultation with the appropriate basin advisory group, identify reference streams or conditions to assist in determining whether the designated beneficial uses of water bodies within a basin are being fully supported. Streams or conditions shall be selected to represent the land types, land uses, hydrology, water uses and geophysical features within the basins described in this chapter. Reference streams or conditions shall be representative of one (1) of the following:

(1) A stream or other water body reflecting natural conditions with few impacts from human activities and which is representative of the highest level of support attainable in the basin; or

(2) A stream or water body reflecting the minimum conditions necessary to fully support the designated beneficial uses of the stream or water body; or

(3) Physical, chemical and biological indicators identified in the rules of the department which reflect full support of designated beneficial uses.

History.
I.C., § 39-3605, as added by 1995, ch. 352, § 1, p. 1165; am. 1997, ch. 279, § 3, p. 828; am. 2013, ch. 348, § 3, p. 941.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 348, in the introductory language, substituted "in consultation with the appropriate basin advisory group" for "in a manner consistent with the public participation provisions set forth in this chapter and in accordance with chapter 52, title 67, Idaho Code" and inserted "of water bodies within a basin" in the first sentence and inserted "hydrology, water uses" in the second sentence; and inserted "of the stream or water body" at the end of subsection (2).

39-3606. Monitoring and use of reference streams or conditions and beneficial use support assessment. — (1) The director shall conduct monitoring to determine whether designated beneficial uses of water bodies are fully supported. In making such determinations, the director shall consult with the basin advisory group and the watershed advisory group with the responsibilities described in this chapter for the water body. The director shall use the appropriate water quality standards as identified in the rules of the department and shall compare the physical, chemical and

biological measures of the water body with the reference stream or condition appropriate to the land type, land uses, hydrology, water uses and geophysical features of the water body as described in section 39-3605(2), Idaho Code. If the water body has such physical, chemical or biological measures as the reference stream or condition, even though such measures may be diminished from the conditions set forth in section 39-3605(1), Idaho Code, then the director shall deem the designated beneficial uses for the water body to be fully supported and as having achieved the objectives of the federal clean water act and of this chapter. When site-specific standards have been developed for an activity pursuant to the rules of the department, the use of reference streams as described in this section shall not be necessary.

(2) The physical, geological, hydrological, atmospheric, chemical or biological measures of a water body to be used to determine whether beneficial uses are fully supported may include, but are not limited to: stream width, stream depth, stream shade, sediment, bank stability, water flows, physical characteristics of the stream that affect habitat for fish, macroinvertebrate species or other aquatic life, and the variety and number of fish or other aquatic life.

History.
I.C., § 39-3606, as added by 1995, ch. 352, § 1, p. 1165; am. 1997, ch. 279, § 4, p. 828; am. 2013, ch. 348, § 4, p. 941.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 348, rewrote the section to the extent that a detailed comparison is impracticable.

39-3607. Revisions and attainability of beneficial uses. — The director shall, in consultation with the appropriate basin advisory group and watershed advisory group, conduct a beneficial use attainability assessment to determine whether beneficial uses should be revised. Designated uses shall be reviewed and revised when such physical, geological, hydrological, atmospheric, chemical or biological measures indicate the need to do so. The director shall consider the economic costs required to attain a revised beneficial use. A designated use, that is not an existing use, shall be removed when it is demonstrated that attaining the use is not feasible, using those factors set forth in 40 CFR 131.10(g).

Previous assessments of beneficial use attainability that are of a quality and content acceptable to the director shall constitute the baseline data against which future assessments shall be made to determine changes in the water body and what beneficial uses can be attained in it. In addition, the director, to the extent possible, may determine whether changes in the condition of the water body are the result of past or ongoing point or nonpoint source activities. The director shall also seek information from appropriate public agencies regarding land uses, water uses and geological or other information for the watershed that may affect water quality and the ability of the water body in question to attain designated beneficial uses. In carrying out the provisions of this section, the director may contract with private enterprises or public agencies to provide the desired data.

History.
I.C., § 39-3607, as added by 1995, ch. 352, § 1, p. 1165; am. 2013, ch. 348, § 5, p. 941.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 348, rewrote the first paragraph to the extent that a detailed comparison is impracticable and inserted "water uses" in the next-to-last sentence in the second paragraph.

39-3609. Identification of water bodies where beneficial uses are not fully supported. — In accordance with the provisions set forth in the federal clean water act and after consultation with the appropriate basin advisory group and watershed advisory group, the director shall notify the appropriate public agencies of any water bodies in which the designated beneficial uses are not fully supported. For water bodies so identified, the director shall place such water bodies into one (1) of the following priority classifications for the development of total maximum daily load or equivalent processes:

(1) "High," wherein definitive and generally accepted water quality data indicate that unless remedial actions are taken in the near term there will be significant risk to designated or existing beneficial uses of a particular water body. The director, in establishing this category, shall consider public involvement as set forth in this chapter.

(2) "Medium," wherein water quality data indicate that unless remedial actions are taken there will be risks to designated or existing beneficial uses.

(3) "Low," wherein limited or subjective water quality data indicate designated uses are not fully supported, but that risks to human health, aquatic life, or the recreational, economic or aesthetic importance of a particular water body are minimal.

History.
I.C., § 39-3609, as added by 1995, ch. 352, § 1, p. 1165; am. 1997, ch. 279, § 5, p. 828; am. 2013, ch. 348, § 6, p. 941.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 348, substituted "after consultation with the appropriate basin advisory group and watershed advisory group" for "the public participation provisions set forth in this chapter" in the first sentence of the introductory paragraph.

Federal References.
The federal clean water act, referred to in the introductory paragraph, is codified as 33 USCS § 1251 et seq.

39-3626. Authorization of grants and loans — Designation of administering agency — Reservation of funds for operations — Criteria — Priority projects — Eligible projects. — (1) The state of Idaho is hereby authorized to make grants and loans at or below market interest rates, as funds are available, to any municipality to assist said municipality in the construction of sewage treatment works, to community public water systems and nonprofit noncommunity public water systems. The state of Idaho is hereby also authorized to make loans at or below

market interest rates for the implementation of a management program established under section 319 of the federal water pollution control act, as amended.

(2) The department of environmental quality may use a portion of the interest revenues from wastewater and drinking water loans, in an amount not to exceed one percent (1%) of loans outstanding, subject to annual appropriation, for operation of the wastewater and drinking water loan programs.

(3) The Idaho board of environmental quality through the department of environmental quality shall be the agency for administration of funds authorized for grants or loans under this chapter, and may reserve up to four percent (4%) of the moneys accruing annually to the water pollution control and wastewater facility loan funds to be appropriated annually for the purpose of operating the water quality programs established pursuant to this chapter. The board may also reserve up to six percent (6%) of the moneys accruing annually to the water pollution control fund to be appropriated annually for the purpose of conducting water quality studies including monitoring.

(4) In allocating state construction grants and loans under this chapter, the Idaho board of environmental quality shall give consideration to water pollution control needs, protection of public health and provision of safe drinking water.

(5) Pursuant to subsection (4) of this section, the Idaho board of environmental quality shall establish an integrated list of priority municipal sewage facility and nonpoint source pollution control projects and a list of priority community and nonprofit noncommunity public water systems.

(6) The Idaho board of environmental quality through the department of environmental quality may transfer funds between the wastewater facility loan account and the drinking water loan account [drinking water loan fund]. Such transfers shall be listed in the annual intended use plan and approved by the Idaho board of environmental quality.

History.

1970, ch. 87, § 3, p. 211; am. 1974, ch. 23, § 155; am. 1974, ch. 80, § 2, p. 1167; am. 1977, ch. 176, § 2, p. 452; am. 1980, ch. 208, § 3, p. 474; am. 1980, ch. 280, § 2, p. 727; am. 1987, ch. 174, § 2, p. 342; am. 1988, ch. 270, § 1, p. 896; am. and redesig. 1995, ch. 352, § 10, p. 1165; am. 1999, ch. 137, § 11, p. 386; am. 2000, ch. 53, § 3, p. 103; am. 2000, ch. 363, § 1, p. 1200; am. 2001, ch. 103, § 37, p. 253; am. 2004, ch. 61, § 1, p. 279; am. 2014, ch. 59, § 1, p. 141.

STATUTORY NOTES

Cross References.

Drinking water loan fund, § 39-7602.

Wastewater facility loan account, § 39-3629.

Water pollution control fund, § 39-3628.

Amendments.

The 2014 amendment, by ch. 59, added subsection (6).

Compiler's Notes.

This section was formerly compiled as § 39-3603 and was amended and redesignated by S.L. 1995, ch. 352.

The bracketed insertion in subsection (6) was added by the compiler to correct the name of the referenced fund. See § 39-7602.

39-3629. Wastewater facility loan account established. — There is hereby created and established in the agency asset fund in the state treasury an account to be known as the wastewater facility loan account. Surplus moneys in the wastewater facility loan account shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury under section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the wastewater facility loan account. The account shall have paid into it:

1. Federal funds which are received by the state to provide for wastewater facility loans together with required state matching funds coming from a portion of the moneys in the water pollution control account as established in section 39-3628, Idaho Code;

2. All donations and grants from any source which may be used for the provisions of this section;

3. All principal and interest repayments of loans made pursuant to this chapter;

4. Fund transfers from the drinking water loan account [drinking water loan fund]; and

5. Any other moneys which may hereafter be provided by law.

History.

I.C., § 39-3605B, as added by 1987, ch. 174, § 5, p. 342; am. 1988, ch. 270, § 4, p. 896; am. and redesig. 1995, ch. 352, § 13, p. 1165; am. 1996, ch. 345, § 1, p. 1155; am. 1998, ch. 16, § 1, p. 113; am. 2014, ch. 59, § 2, p. 141.

STATUTORY NOTES

Cross References.

Drinking water loan fund, § 39-7602.
State treasurer, § 67-1201 et seq.

Amendments.

The 2014 amendment, by ch. 59, inserted present subsection 4. and redesignated former subsection 4. as subsection 5.

Compiler's Notes.

The bracketed insertion in subsection 4 was added by the compiler to correct the name of the referenced fund. See § 39-7602.

CHAPTER 41

IDAHO BUILDING CODE ACT

39-4106. Idaho building code board created — Membership — Appointment — Terms — Quorum — Compensation — Meetings. — (1) The Idaho building code board is established within the division as an appeals, code adoption and rulemaking board, to be appointed by the governor, and shall consist of ten (10) members: one (1) member of the general public; one (1) local fire official; one (1) licensed engineer; one (1) licensed architect; two (2) local building officials, one (1) from a county and one (1) from a city; two (2) building contractors, one (1) residential contractor who is an active member of the Idaho building contractors

association with construction knowledge based primarily on a work history of buildings regulated by the International Residential Code, and one (1) commercial contractor who is an active member of either the associated builders and contractors or the associated general contractors of America with construction knowledge based primarily on a work history of buildings regulated by the International Building Code; one (1) representative of the modular building industry; and one (1) individual with a disability from an organization that represents people with all types of disabilities. Board members shall be appointed for terms of four (4) years and until their successor has been appointed. Three (3) consecutive failures by a member to attend meetings of the board without reasonable cause shall constitute cause for removal of the member from the board by the governor. Whenever a vacancy occurs, the governor shall appoint a qualified person to fill the vacancy for the unexpired portion of the term.

(2) The members of the board shall, at their first regular meeting following the effective date of this chapter and every two (2) years thereafter, elect by majority vote of the members of the board, a chairman who shall preside at meetings of the board. A majority of the currently appointed members of the board shall constitute a quorum.

(3) Each member of the board not otherwise compensated by public moneys shall be compensated as provided by section 59-509(n), Idaho Code, for each day spent in attendance at meetings of the board.

(4) The board shall meet for regular business sessions at the call of the administrator, chairman, or at the request of four (4) members of the board, provided that the board shall meet at least biannually.

History.

I.C., § 39-4106, as added by S.L. 1975, ch. 180, § 2, p. 486; am. 1980, ch. 247, § 39, p. 582; am. 1983, ch. 153, § 3, p. 407; am. 1986, ch. 304, § 1, p. 755; am. 1988, ch. 264, § 14, p. 519; am. 1995, ch. 267, § 10, p. 856; am. 2000, ch. 465, § 2, p. 1439; am. 2001, ch. 151, § 1, p. 546; am. 2002, ch. 345, § 8, p. 963; am. 2009, ch. 173, § 1, p. 551; am. 2012, ch. 36, § 1, p. 107.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 36, substituted "59-509(n)" for "59-509(h)" in subsection (3).

39-4109. Application of codes. — (1) The following codes are hereby adopted for the state of Idaho division of building safety and shall only be applied by local governments as prescribed by section 39-4116, Idaho Code:

(a) The 2006 International Building Code shall be in effect, until such time as a subsequent version is adopted by the Idaho building code board, at which time the subsequent versions of the International Building Code as adopted and amended by the Idaho building code board through the negotiated rulemaking process as established in section 67-5221, Idaho Code, and as further provided in subsection (5) of this section and in accordance with subsections (2) and (3) of this section shall be in effect:

(i) Including appendices thereto pertaining to building accessibility;

(ii) Excluding the incorporated electrical codes, mechanical code, fuel gas code, plumbing codes, fire codes or property maintenance codes

other than specifically referenced subjects or sections of the International Fire Code; and

(iii) Including the incorporated Idaho residential code, parts I, II, III, IV and IX; Idaho energy conservation code; and rules promulgated by the board to provide equivalency with the provisions of the Americans with disabilities act accessibility guidelines and the fair housing act accessibility guidelines shall be included.

(b) The version of the International Residential Code adopted by the Idaho building code board, together with the amendments, revisions or modifications adopted by the Idaho building code board through the negotiated rulemaking process, except for parts V, VI, VII and VIII, as they pertain to mechanical, fuel gas, plumbing and electrical requirements, shall collectively constitute and be named the Idaho residential code. The Idaho residential code shall be in effect until such time as a subsequent version is adopted by the Idaho building code board, at which time the subsequent version of the Idaho residential code, as adopted and amended by the Idaho building code board through the negotiated rulemaking process provided in this section, shall be in effect. Any amendments, revisions or modifications made to the Idaho residential code by the board shall be made by administrative rules promulgated by the board;

(c) The version of the International Energy Conservation Code adopted by the Idaho building code board, together with the amendments, deletions or additions adopted by the Idaho building code board through the negotiated rulemaking process provided in this chapter, shall be in effect. The International Energy Conservation Code, together with any amendments, revisions or modifications made by the board, shall collectively constitute and be named the Idaho energy conservation code. The Idaho energy conservation code shall be in effect until such time as a subsequent version is adopted by the Idaho building code board, at which time the subsequent versions of the Idaho energy conservation code, as adopted and amended by the Idaho building code board through the negotiated rulemaking process provided in this section, shall be in effect. Any amendments, revisions or modifications made to the Idaho energy conservation code by the board shall be made by administrative rules promulgated by the board; and

(d) The 2006 International Existing Building Code as published by the International Code Council shall be in effect until such time as a subsequent version is adopted by the Idaho building code board, at which time the subsequent versions of the International Existing Building Code, as adopted and amended by the Idaho building code board through the negotiated rulemaking process provided in this section, shall be in effect.

(2) No amendments to the accessibility guidelines shall be made by the Idaho building code board that provide for lower standards of accessibility than those published by the International Code Council.

(3) No amendments to the Idaho residential building code shall be made by the Idaho building code board that provide for standards that are more restrictive than those published by the International Code Council.

(4) Any edition of the building codes adopted by the board will take effect on January 1 of the year following its adoption.

(5) In addition to the negotiated rulemaking process set forth in section 67-5221, Idaho Code, the board shall conduct a minimum of two (2) public hearings, not less than sixty (60) days apart. Express written notice of such public hearings shall be given by the board to each of the following entities not less than five (5) days prior to such hearing: associated general contractors of America, associated builders and contractors, association of Idaho cities, Idaho association of building officials, Idaho association of counties, Idaho association of REALTORS®, Idaho building contractors association, American institute of architects Idaho chapter, Idaho fire chiefs association, Idaho society of professional engineers, Idaho state independent living council, southwest Idaho building trades, Idaho building trades, and any other entity that, through electronic or written communication received by the administrator not less than twenty (20) days prior to such scheduled meeting, requests written notification of such public hearings.

History.

I.C., § 39-4109, as added by 2002, ch. 345, § 13, p. 963; am. 2004, ch. 272, § 3, p. 757; am. 2004, ch. 359, § 2, p. 1067; am. 2007, ch. 184, § 1, p. 532; am. 2009, ch. 173, § 2, p. 551; am. 2009, ch. 279, § 1, p. 841; am. 2010, ch. 79, § 14, p. 133; am. 2014, ch. 248, § 1, p. 623.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 248, in subsection (1), substituted "Idaho residential code" for "International Residential Code" and "Idaho energy conservation code" for "International Energy Conservation Code" in paragraph (a)(iii), rewrote paragraphs (b) and (c), relating to International Residential Code and International Energy Conservation Code procedures; substituted "Idaho residential building code" for "International Residential Building Code in subsection (3).

Federal References.

The Americans with disabilities act, referred to in subdivision (1)(a)(iii), is codified as 42 USCS § 12101 et seq.

The fair housing act, referred to in subdivision (1)(a)(iii), is codified as 42 USCS § 3601 et seq.

Compiler's Notes.

The international codes cited in this section are promulgated by the International Code Council, which is dedicated to building safety and fire prevention. See *http://www.iccsafe.org*.

Websites for organizations referenced in subsection (5):

associated general contractors of America — *http://www.agc.org/*

associated builders and contractors — *http://www.abc.org/*

association of Idaho cities — *http://www.idahocities.org/*

Idaho association of building officials — *http://www.idabo.org/*

Idaho association of counties — *http://www.idcounties.org/*

Idaho association of REALTORS® — *http://www.idahorealtors.com/*

Idaho building contractors association — *http://ibca.org/*

American institute of architects Idaho chapter — *http://www.aiaidaho.com/*

Idaho fire chiefs association — *http://idahofirechiefs.org/*

Idaho society of professional engineers — *http://www.idahospe.org/*

Idaho state independent living council — *http://www.silc.idaho.gov/*

southwest Idaho building trades — *http://www.bcaswi.org/*

39-4111. Permits required.

JUDICIAL DECISIONS

Negligence Per Se.

Applicable building codes requiring a building permit did not mandate site engineering, and the landowner's failure to obtain a building permit was not the proximate cause of the operator's injury; thus, negligence per se was not shown. Stem v. Prouty, 152 Idaho 590, 272 P.3d 562 (2012).

39-4115. Personnel. — The division shall designate a nonclassified employee to serve as the executive director of the board and such other personnel as necessary to effect enforcement of the codes herein enumerated or otherwise prescribed by rules promulgated by the board pursuant to this chapter.

History.

I.C., § 39-4115, as added by 1975, ch. 180, § 2, p. 486; am. 2002, ch. 345, § 19, p. 963; am. 2012, ch. 28, § 1, p. 85.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 28, substituted "designate a nonclassified employee to serve" for "employ a bureau chief, who shall in addition to his other duties, function" near the beginning of the first sentence and deleted the former last sentence, which read: "All such employees, except the bureau chief, shall be classified as prescribed in chapter 53, title 67, Idaho Code."

39-4116. Local government adoption and enforcement of building codes. — (1) Local governments enforcing building codes shall do so only in compliance with the provisions of this section. Local governments that have not previously instituted and implemented a code enforcement program prior to the effective date of this act may elect to implement a building code enforcement program by passing an ordinance evidencing the intent to do so. Local governments may contract with a public or private entity to administer their building code enforcement program.

(2) Local governments that issue building permits and perform building code enforcement activities shall, by ordinance effective January 1 of the year following the adoption by the Idaho building code board, adopt the following codes as published by the International Code Council together with any amendments or revisions set forth in section 39-4109, Idaho Code, including subsequent versions of the International Building Code as adopted and amended by the Idaho building code board through the negotiated rulemaking process provided in this chapter:

(a) International Building Code, including all rules promulgated by the board to provide equivalency with the provisions of the Americans with disabilities act accessibility guidelines and the federal fair housing act accessibility guidelines;

(b) Idaho residential code, parts I-IV and IX; and

(c) Idaho energy conservation code.

Local governments are not required by this chapter to adopt the other referenced codes in the International Building Code.

(3) All single family homes and multiple family dwellings up to two (2) units are hereby exempted from the provisions of the International Fire

Code, the International Building Code and the Idaho residential code that require such dwellings to have automatic fire sprinkler systems installed. Nothing in this section shall prevent any person from voluntarily installing an automatic fire sprinkler system in any residential dwelling.

(4) Local governments may amend by ordinance the adopted codes or provisions of referenced codes to reflect local concerns, provided such amendments establish at least an equivalent level of protection to that of the adopted building code. A local jurisdiction shall not have the authority to amend any accessibility provision pursuant to section 39-4109, Idaho Code, except as provided in paragraphs (a) and (b) of this subsection.

(a) A local jurisdiction shall not have the authority to amend any accessibility provision pursuant to section 39-4109, Idaho Code.

(b) A local jurisdiction shall not adopt any provision of the International Building Code or Idaho residential code or appendices thereto that has not been adopted or that has been expressly rejected or exempted from the adopted version of those codes by the Idaho building code board through the negotiated rulemaking process as provided in section 39-4109, Idaho Code. Provided however, that, after a finding by the local jurisdiction that good cause exists for such an amendment to such codes and that such amendment is reasonably necessary, a local jurisdiction may adopt such provision by ordinance in accordance with the provisions of chapter 9, title 50, Idaho Code, and provided further that such local jurisdiction shall conduct a public hearing and, provided further, that notice of the time and place of the public hearing shall be published in the official newspaper or paper of general circulation within the jurisdiction and written notice of each of such public hearing and the proposed language shall be given by the local jurisdiction to the local chapters of the entities identified in section 39-4109(5), Idaho Code, not less than thirty (30) days prior to such hearing. In the event that there are no local chapters of such entities identified in section 39-4109(5), Idaho Code, within the local jurisdiction holding the hearings, the notice shall be provided to the state associations of the respective entities.

(5) Local governments shall exempt agricultural buildings from the requirements of the codes enumerated in this chapter and the rules promulgated by the board. A county may issue permits for farm buildings to assure compliance with road setbacks and utility easements, provided that the cost for such permits shall not exceed the actual cost to the county of issuing the permits.

(6) Permits shall be governed by the laws in effect at the time the permit application is received.

(7) The division shall retain jurisdiction for in-plant inspections and installation standards for manufactured or mobile homes and for in-plant inspections and enforcement of construction standards for modular buildings and commercial coaches.

History.

I.C., § 39-4116, as added by 2002, ch. 345, § 21, p. 963; am. 2004, ch. 272, § 4, p. 757; am. 2009, ch. 173, § 3, p. 551; am. 2009, ch. 219, § 2, p. 681; am. 2009, ch. 279, § 2, p. 841; am. 2010, ch. 79, § 15, p. 133; am. 2014, ch. 248, § 2, p. 623.

STATUTORY NOTES

Cross References.

Idaho building code board, § 39-4106 et seq.

Amendments.

The 2014 amendment, by ch. 248, substituted "Idaho residential code" for "International Residential Code" in paragraph (2)(b), subsection (3), and paragraph (4)(b); and substituted "Idaho energy conservation code" for "International Energy Conservation Code" in paragraph (2)(c).

Compiler's Notes.

The phrase "the effective date of this act" in subsection (1) refers to the effective date of S.L. 2002, ch. 345, which was July 1, 2002.

The international codes cited in this section, and the Idaho codes derived therefrom, are promulgated by the International Code Council, which is dedicated to building safety and fire prevention. See *http://www.iccsafe.org*.

CHAPTER 44

HAZARDOUS WASTE MANAGEMENT

SECTION.

39-4403. Definitions. — As used in this chapter:

(1) "Board" means the Idaho board of environmental quality.

(2) "Commercial hazardous waste facility or site" means any hazardous waste facility whose primary business is the treatment, storage or disposal, for a fee or other consideration, of hazardous waste generated offsite by generators other than the owner and operator of the facility.

(3) "Department" means the Idaho department of environmental quality.

(4) "Director" means the director of the Idaho department of environmental quality or the director's authorized agent.

(5) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(6) "Gate ton" means the weight, in tons (2,000 pounds/ton), of waste material received at a facility. This weight does not include any subsequent changes to the weight resulting from the management of the waste by the facility.

(7) "Generator" means any person, who by virtue of ownership, management, or control, is responsible for causing or allowing to be caused the creation of a hazardous waste.

(8) "Hazardous waste" means a waste or combination of wastes of a solid, liquid, semisolid, or contained gaseous form which, because of its quantity, concentration or characteristics (physical, chemical or biological) may:

(a) Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible or incapacitating reversible illnesses; or

(b) Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitible, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties but do not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to national pollution discharge elimination system permits under the federal water pollution control act, as amended, 33 U.S.C., section 1251 et seq., or source, special nuclear, or byproduct material as defined by the atomic energy act of 1954, as amended, 42 U.S.C., section 2011 et seq.

(9) "Hazardous waste management" means the systematic control of the collection, source separation, storage, treatment, transportation, processing, and disposal of hazardous wastes.

(10) "Hazardous waste facility or site" means any property, structure, or ancillary equipment intended or used for the transportation, treatment, storage or disposal of hazardous wastes.

(11) "Injection" means the subsurface emplacement of free liquids.

(12) "Manifest" means a form used for identifying the quantity, composition, origin, routing, waste identification code(s), and destination of hazardous waste during any transportation from the point of generation to the point of treatment, storage or disposal.

(13) "Manifested waste" means waste which at the point of origin or generation is required to be manifested for transportation in a manner similar to that of the federal uniform hazardous waste manifest or by other manifest requirements designed to assure proper treatment, storage and disposal of such waste.

(14) "PCB waste" means any waste or waste item which is not included in the definition of "hazardous waste" and which is contaminated with polychlorinated biphenyls.

(15) "Person" means any individual, association, partnership, firm, joint stock company, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency, or instrumentality, or any other legal entity which is recognized by law as the subject of rights and duties.

(16) "RCRA" means the resource conservation and recovery act of 1976 as amended from time to time.

(17) "Restricted hazardous waste" means a waste or combination of wastes regulated as land disposal restricted pursuant to federal statutes and regulations, including 40 CFR part 268. Restricted hazardous waste also includes byproduct, source, special nuclear materials or devices or equipment, except as provided below, utilizing such materials regulated under the federal atomic energy act of 1954, as amended. Restricted hazardous waste shall not include radiologically contaminated waste materials from "Formerly Utilized Sites Remedial Action Program (FUSRAP)" sites administered by the United States army corps of engineers or mate-

rials that have been exempted or released from radiological control or regulation under the atomic energy act of 1954, as amended, to be disposed of in a commercial hazardous waste facility as regulated pursuant to the rules, permit requirements and acceptance criteria provided for by this chapter.

(18) "Storage" means the containment of hazardous wastes, on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous wastes.

(19) "Transportation" means the movement of any hazardous waste to or from a hazardous waste facility or site.

(20) "Transporter" means any person who transports a hazardous waste to or from a hazardous waste facility or site.

(21) "Treatment" means any method, technique, or process, including neutralization, which is designed not to be an integral part of a production process, but which is rather designed to change the physical, chemical, or biological character or composition of any hazardous waste prior to storage or final disposal so as to neutralize such waste or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(22) "Waste" means any solid, semisolid, liquid or contained gaseous material for which no reasonable use or reuse is intended or which is intended to be discarded.

History.

I.C., § 39-4403, as added by 1983, ch. 154, § 1, p. 416; am. 1984, ch. 205, § 1, p. 502; am. 1986, ch. 148, § 1, p. 415; am. 1986, ch. 324, § 1, p. 794; am 1989, ch. 253, § 1, p. 626; am. 1993, ch. 291, § 1, p. 1082; am. 1994, ch. 419, § 1, p. 415; am. 2001, ch. 103, § 45, p. 253; am. 2001, ch. 297, § 3, p. 1072; am. 2011, ch. 38, § 1, p. 92; am. 2014, ch. 265, § 1, p. 660.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 265, in the last sentence in subsection (17), substituted "or materials that have been exempted or released from radiological control or regulation under the atomic energy act of 1954, as amended" for "and being disposed of pursuant to a contract in existence on July 1, 2001, and as may be renewed thereafter, or byproduct materials or devices or equipment utilizing such materials that are authorized by the United States nuclear regulatory commission pursuant to the federal energy policy act of 2005" and added "as regulated pursuant to the rules, permit requirements and acceptance criteria provided for by this chapter" at the end.

Federal References.

The resource conservation and recovery act of 1976, referred to in subdivision (16) of this section, is codified as 42 USCS § 6901 et seq.

The atomic energy act of 1954, referred to in subsection (17), is codified as 42 U.S.C.S. § 2011 et seq.

39-4432. Distribution of commercial disposal fee revenues. — The revenues received from the commercial disposal fees imposed by this chapter and any penalties, interest, or deficiency additions, shall be paid over to the state treasurer by the department to be distributed periodically but no less frequently than quarterly as follows:

(1) An amount equal to ninety-five percent (95%) shall be remitted to the general fund of the state, which percentage shall be reduced to ninety-three percent (93%) in fiscal year 2013, to ninety-one percent (91%) in fiscal year 2014, to eighty-five percent (85%) in fiscal year 2015, and shall remain at eighty-five percent (85%) for each fiscal year thereafter; and

(2) An amount equal to five percent (5%) shall be remitted to the county treasurer of the county where the activity occurred which caused the fees to be assessed pursuant to this chapter. Moneys returned to the county shall be utilized by the county to respond to health and environmental problems which may be caused by hazardous waste emergencies or spills, or improperly handled or packaged hazardous waste; and

(3) An amount equal to one percent (1%) in fiscal year 2013, an amount equal to two percent (2%) in fiscal year 2014, and an amount equal to five percent (5%) in fiscal year 2015, and an amount equal to five percent (5%) for each fiscal year thereafter shall be remitted to the treasurer of a county highway district created pursuant to chapter 13, title 40, Idaho Code, to maintain a road under the jurisdiction of such district that connects a rail transfer facility to a commercial hazardous waste facility affiliated with such rail transfer facility. The use of the moneys provided for in this subsection shall be used only for the maintenance, construction and repair of the road described in this subsection; and

(4) An amount equal to one percent (1%) in fiscal year 2013, an amount equal to two percent (2%) in fiscal year 2014, and an amount equal to five percent (5%) in fiscal year 2015, and an amount equal to five percent (5%) for each fiscal year thereafter shall be remitted to the state highway account established in section 40-702, Idaho Code, such amount to be utilized by the Idaho transportation department to maintain a road or roads under the state board of transportation's jurisdiction that connects a rail transfer facility to a commercial hazardous waste facility affiliated with such rail transfer facility. The use of the moneys provided for in this subsection shall be used only for the maintenance, construction and repair of the road described in this subsection.

History.

I.C., § 39-4432, as added by 1984, ch. 205, § 10, p. 502; am. 1989, ch. 419, § 1, p. 1023; am. 1997, ch. 313, § 4, p. 926; am. 1998, ch. 229, § 7, p. 778; am. 1999, ch. 290, § 6, p. 718; am. 2012, ch. 304, § 1, p. 843.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 304, in subsection (1), added the provisions beginning "which percentage shall be reduced"; in subsection (2), deleted "the remaining" preceding "five percent" and deleted the former second sentence which read, "Moneys shall be apportioned to the counties in the same proportional manner in which they were collected"; and added subsections (3) and (4).